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PROCEEDINGS AND DEBATES OF THE 77th CONGRESS, SECOND SESSION

SENATE

THURSDAY, MARCH 26, 1942

(Legislative day of Thursday, March 5, 1942)

The Senate met at 12 o'clock noon, on the expiration of the recess.

The Rev. Gove G. Johnson, D. D., pastor, National Baptist Memorial Church, Washington, D. C., offered the following prayer:

Our gracious Father, in these troublous times when men are fainting from fear and for expectation of the things that are coming upon the inhabitants of the earth, as the Saviour foretold, we look to Thee for Thy grace and guidance in this crucial hour for our country and our Congress. We pray that peace may come again on earth and good will be among men.

"While for all mankind we pray, of every clime and coast,
Hear us for our native land, the land we love the most."

We ask Thy blessing in this hour, and that Thy fear be put into the hearts of the people and of our leaders, that we may not only be war conscious but God conscious, and that we may, above everything, obey Thy law, and seek Thy love eternal. Grant Thy blessing, we beseech of Thee, that national repentance and return to Thee may be granted, and then we need fear no foe.

Bless and guard, we pray Thee, the President of the United States, the Vice President, the Presiding Officer of the Senate, and the Members of the Senate, that they may have grace and guidance, that there may be worthy transaction as well as discussion of all matters; and, in the light of Thy love and love of country, may Thy holy spirit lead and bring all to pass.

Hear our prayer; grant Thy gracious salvation to each one of us, through Jesus Christ, our Saviour, our Lord, and our coming King. In His name we pray. Amen.

THE JOURNAL

On request of Mr. OVERTON, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day of Wednesday, March 25, 1942, was dispensed with, and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 6691) to increase the debt limit of the United States, to further amend the Second Liberty Bond Act, and for other purposes.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 6736) making appropriations for the fiscal year ending June 30, 1943, for civil functions administered by the War Department, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. SNYDER, Mr. TERRY, Mr. STARNES of Alabama, Mr. COLLINS, Mr. KERR, Mr. MAHON, Mr. POWERS, Mr. ENGEL, and Mr CASE of South Dakota were appointed managers on the part of the House at the conference.

The message further announced that the House had passed a bill (H. R. 5695) to amend the Civilian Pilot Training Act of 1939 so as to provide for the training of civilian aviation technicians and mechanics, in which it requested the concurrence of the Senate.

SENATOR FROM NORTH DAKOTA

The Senate resumed consideration of the resolution (S. Res. 220) declaring WILLIAM LANGER not entitled to be a United States Senator from the State of North Dakota.

Mr. AUSTIN. Mr. President, I wish to ask a courtesy of the Senate in view of the limitation of time under the agreement which was entered into yesterday. The request is that we do not engage in the transaction of routine business this morning, and that I may be permitted to use the time for the purpose to which I have been assigned by the majority of the committee, and that is to present the views of the committee.

Mr. OVERTON. Mr. President, will the Senator yield to me to suggest the absence of a quorum?

Mr. AUSTIN. Yes; I yield to the Senator from Louisiana for that purpose.

Mr. OVERTON. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Brewster	Caraway
Austin	Brooks	Chandler
Bailey	Brown	Chavez
Ball	Bulow	Clark, Idaho
Bankhead	Burton	Clark, Mo.
Barbour	Butler	Connally
Barkley	Byrd	Danaher
Bone	Capper	Davis
Doxey	McCarran	Shipstead
Ellender	McFarland	Smathers
George	McKellar	Smith
Gerry	McNary	Spencer
Gillette	Maloney	Stewart
Glass	Maybank	Taft
Green	Mead	Thomas, Idaho
Guffey	Millikin	Thomas, Okla.
Gurney	Murdock	Thomas, Utah
Hayden	Murray	Tobey
Herring	Nye	Truman
Hill	O'Daniel	Tunnell
Holman	O'Mahoney	Tydings
Hughes	Overton	Vandenberg
Johnson, Calif.	Pepper	Van Nuys
Johnson, Colo.	Radcliffe	Wagner
Kilgore	Reed	Walsh
La Follette	Reynolds	Wheeler
Langer	Rosier	White
Lee	Russell	Wiley
Lucas	Schwartz	Willis

Mr. HILL. I announce that the Senator from New Mexico [Mr. HATCH] is absent from the Senate because of illness.

The Senator from California [Mr. DOWNEY] and the Senator from Washington [Mr. WALLGREN] are holding hearings in Western States on matters pertaining to national defense.

The Senator from Florida [Mr. ANDREWS], the Senator from Mississippi [Mr. BILBO] and the Senator from Nevada [Mr. BUNKER] are necessarily absent.

Mr. McNARY. I announce that the Senator from Nebraska [Mr. NORRIS] is absent because of illness.

Mr. AUSTIN. The Senator from New Hampshire [Mr. BRIDGES] is absent as a result of an injury and illness.

The Senator from Massachusetts [Mr. LODGE] is necessarily absent.

The PRESIDENT pro tempore. Eighty-seven Senators have answered to their names. A quorum is present.

Mr. McCARRAN and other Senators addressed the Chair.

Mr. AUSTIN. Mr. President, I have asked Senators not to request that I yield for routine business this morning, in view of the fact that my time is very limited.

Mr. McCARRAN. I merely desired to present a report from a committee.

Mr. AUSTIN. I understand, and there are many in the same situation. I regret that I cannot appear to be as generous as I really am, but in the performance of my duty I am obliged to conserve the time, if possible.

Mr. President I shall attempt to present the views of the committee, with respect to the law which has been so ably debated, in the following classifications

First. That this is not a case for expulsion to which article I, section 5, paragraph 2, of the Constitution applies; in other words, that this is not a case in which a two-thirds vote is required.

The second part of my discussion will relate to the challenge to the jurisdiction of the Senate to consider any case brought here by people of this country challenging the qualifications of a Senator-elect before he enters the door of the Senate. In other words, the second branch of what I have to say is directed to the point that this is not a case in which a State has violated article I, section 3, paragraph 3, by electing a person not eligible by reason of age, citizenship, or residence.

My concluding chapter relating to the legal issue is the simple proposition that this is a case for exclusion under article I, section 5, paragraph 1, of the Constitution.

Let us proceed to the claim which the committee makes and on which the committee divided, 13 to 3; namely, that the Senate, acting as a body, cannot expel a man who is not a Member of the Senate. It seems axiomatic, and as though it were not necessary to debate such a proposition, and that all that need be said is that the Senate cannot expel a man who is not a Member of the Senate.

The power of expulsion is limited by principle and policy and universal, unbroken practice to punishment of a man who is within the Senate and whose credentials and whose right to his seat in the Senate are above question. It presumes that he has passed the barrier which might be raised against him by his people and that the cause against him is one which arose by virtue of his act committed during his membership, or by virtue of his act committed outside his membership, but which takes effect during his membership, either by sudden discovery during his membership that he is unworthy to be a Senator, or that its consequences upon his public service first accrued during his membership as a Senator.

I have boldly asserted the equivalent of the claim that the Senator-elect here is not a Senator, that he is not a Member of the Senate, and I wish to dwell upon that thought for just a few moments. Indeed, I have to be brief in whatever I say, in view of the time limitation.

This case arose upon a petition by the people of North Dakota. This must be borne in mind in what we are doing, and we must remember that the issue was not initiated within the Senate of the United States. This is not an issue of law or fact between the Senate of the United States and WILLIAM LANGER; it is an issue between the people of North Dakota and WILLIAM LANGER. The Senate of the United States, the whole Senate, as a governmental organ and body, is the judge in the settlement of that issue.

Mr. LANGER comes here, and at the door he is challenged by a petition of his own people. No Senator raised the issue. The people of North Dakota said to the United States Senate, under the Constitution, "Stop this man. He is not entitled to a seat because he is not qualified morally to be a Senator." To be sure, Mr. President, they did say also that he was not legally elected a Senator because of irregularities in his election. But both causes were alleged, not by someone in the United States Senate, not by the Senate as a governmental organ, but by the people of the State of North Dakota.

By the way, Mr. President, let me not fail to point out that the people of North Dakota are citizens of the United States, and that as citizens of the United States they have rights also in addition to those which they have as citizens of the State of North Dakota, and among them is the right to have this organ of government, which belongs to them as citizens of the United States, judicially pass upon the issues they raise upon the evidence and according to the law, without fear and without favor, and with that high regard which is necessary for the moral strength of this Nation, of which they are members and through which they are united.

The people assembled in the Constitutional Convention after a futile effort to revive that unity which had been destroyed when they declared their independence of Britain. Previous to that time they had been united in the person of the King. The King's person was the device in government which united them, and upon the declaration of independence and the severance of that tie, they were scattered as seed corn. So they tried to replace that unifying medium by Articles of Confederation; they set up a Continental Congress, and they afterward set up a Congress under the Articles of Confederation. Did they create unity? On the contrary, they created the beginnings of anarchy.

In those days every State was a complete sovereign, and it sent to Congress delegates; it sent what I have heard two Senators in this debate claim the States now send to Congress, namely, ambassadors. Those two Senators are the distinguished statesmen who have made the fight to prevent the Senate from responding in the affirmative to the petition of the people of North Dakota. Therefore, Mr. President, I am forced to the conclusion that their position is due to a fundamental error, namely, that they still believe that the Government of the United States is a mere confederation, in which the Articles of Confederation provide that the States can take back their delegates; that those who appear here in that debating society called the United States Congress represent the States and have contempt for that Federal Government which should be the unifying characteristic of a great country such as ours.

We know that historically it is true that there was such competition among the States in that Confederation as to lead to economic collapse of the country; and, under the device of getting together the leaders of thought of the New World for the purpose of curing this economic difficulty, there occurred the meeting of probably the greatest galaxy of statesmen the world has ever seen together at one time.

What did they do? They supplied that which was missing from the Articles of Confederation and from the Confederacy; they supplied the unifying machinery, namely, a republic, a great republic, and everything that is contained in the Constitution of the United States which relates to that Republic—the creation of a government of the people of the United States; not a creation of the government of the people of 48 separate States—everything they put into that Constitution with respect to the officials of that Government, from the President down, and especially those officials who represented the people, namely, the Senators and the Representatives of the people of the United States—everything related to that unifying feature of our Federal system, the Republic, came from the people of the Nation, not from the people organized as the several States.

These officers became the officers of the people of the United States, not the officers of the people of the several States. No longer were Senators and Representatives to be called even ambassadors. It was truly provided by the Constitution, in which the people of this country agreed, as citizens of the United States, that Senators should be the Senators of the United States from these several States. So jealous were they of this unity of a great nation that throughout the framing of the Constitution they kept the firmest hands upon everything pertaining to the creation of the office of a Senator and the election of a man to be Senator, and the final decision of the qualifications of a Senator; and when they did delegate anything at all to a State, they hitched a rope to it.

Mr. President, I have heard Senators claim that there was something that the States reserved to themselves with respect to the qualifications of Senators. I so violently disagree with that assertion that it is difficult for me to discuss it calmly. A State may not reserve that which it never had, and there was not a State then, and there is not a State now, which has any authority or any power whatever over a Federal officer. The Federal Government, the great Republic, did not then exist.

This is not in conflict with the principle to which we all are devoted and for which we would fight to the bitter end, that in the beginning to the States alone belonged jurisdiction and authority over all affairs that were domestic and pertained to the government of the several States, and we probably did not need the tenth amendment to reserve in the States the great reservoir of power over all domestic affairs; but we did reserve expressly all those powers which were not expressly delegated to the Federal Government or which are necessarily implied from the delegations expressed. That does not conflict at all with that magnificent thing which was created by the Constitution—a union, a union not merely of indestructible States but a union that was indissoluble because it was a union of the people of the United States.

Let us not forget as we perform our humble duty here that we are the servants of the people of the United States, and their interest in our performance of that duty is great, whether they reside in the Green Mountains or whether they reside on the coast of the blue Pacific. The people of North Dakota initiated this proceeding of which we as the Senate,

an organ of this Republic created by the people of the United States, are the judge; but they are far from being the only people in the United States who will be affected by the judgment of this court. Are the practices of this court—I speak advisedly when I say "court"—to be regarded carelessly? I affirm that there has never absolutely never, been a case for expulsion tried and acted upon by the Senate of the United States in which there was not contained this ingredient, namely, that the act, the condition, the cause for expulsion occurred during the membership of the person acted upon.

Mr. President, the precedents to that effect are numerous; they are unbroken; there is not a single exception; but they have something more for sanction than the high regard which the people of the United States have always had for custom and precedent in judicial matters, namely, they have the sanction of reason.

Let us look at this question from the point of view of what we would do if we were members of that great Constitutional Convention and had before us the policy to determine. In order to expel a Member of this body there must be two-thirds agreement on the part of the Senate. It is a special provision; it is a severe provision. Why was it put there? The reason it was put there helps us to understand the difference between the process of acting upon a petition of the people back home and the process of acting upon a petition initiated in the Senate.

When a Senator, or any group of Senators in the United States Senate, comes forward and prefers a charge against a fellow Senator who occupies his seat unchallenged at the door, we would say as a matter of policy, just as our forefathers said, that in such a case there must be an extraordinary demand made of those who prefer such a charge after a Senator has come here with proper credentials, with good reputation, with no challenge from his own people, and has acquired his title, and has become established here. Then indeed there should be a severe test, and our forefathers said that in such case two-thirds should be required to expel him. In every other case, however, only a majority is required. This is for the reason that the people of the United States, interested in the character and quality of the Senate of the United States, should have a fair chance to raise the question at the door, and have it decided by a mere majority.

The people of the United States wrote into their charter the provision that even though a Senator-elect presents himself with prima facie good title, the Senate alone shall be the judge of his qualifications. The people on the outside should not be brought under the strict rule and heavy burden of a two-thirds vote, but the Senate should act, under its rules, by a majority vote. In other words, the distinction between the process for exclusion and the process for expulsion has been kept clean and clear-cut for 150 years without a single exception, always exactly the same, though statesmen have risen, as they have in this case, and tried to break it. The public—the people of the United States and the people of the several States—is given the opportunity to come to this court with a petition, submitting to this court the qualifications of the Senator-elect, with the right to a decision similar to judicial action in the courts of the land, on the basis of a majority. That is a part of the rights of the people of the United States, and it is our duty to guard and protect it. We have no choice.

It will be seen that I have made two propositions. One is the general rule that in the history of this Government no man has ever been expelled from the Senate or House of Representatives, and no attempt has been made to expel any man from the Senate or House, save for a cause which accrued during his membership. It may have occurred earlier, and before his election, but the cause of action, the cause of expulsion, is related to the performance of his office as a Senator of the United States, and the process can be initiated only after he has become such.

The other proposition is that this candidate has not become a Senator of the United States. At most, he is only a conditional Senator. It might be said, by the use of a word which is familiar with respect to some other things, that this condition is a putative one. He is a putative Senator. There is a certain imperfection. According to the practice of the Senate and according to the express condition and probation under which he was allowed to take his seat and his oath, he did so upon condition that after the hearing on the petition of his people which challenged him at the door, he might go out as if he had never taken his seat.

I make no point about the morals, the good manners, or the ethics of a man making such an agreement when he comes in here and forthwith repudiating it. It is not surprising, in view of the character shown by the evidence and pointed to in the report of the committee.

Mr. President, I come to the second point. This is not a case in which a State—meaning North Dakota—has violated article I, section 3, clause 3, by electing a person not eligible by reason of age, citizenship, or residence. I am a little surprised to find several distinguished lawyers here still arguing that old question, which has been decided so many times by both Houses of the Congress that one would think it was a closed incident, in the language of diplomacy. The section of the Constitution to which I refer reads:

> No person shall be a Senator who shall not have attained to the age of 30 years and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State from which he shall be chosen.

Observe that that is literally an imposition of a limitation upon the States. It says to the several States directly, expressly, and in unambiguous terms, "This is an officer of the United States. In choosing him there are certain prescribed disqualifications which you must observe. If you do not observe them, if there is one breach in the matter of disqualifications, the Senate of the United States, which is the sole judge of elections, ought to bar at the door the Senator-elect whom you have sent here."

Mr. President, those disqualifications were added to. If they were qualifications, what were the people of the United States doing by adding disqualifications to them? If they could be reversed and read affirmatively as qualifications, what earthly need was there for passing the fourteenth amendment? There had been no difficulty in dealing with innumerable cases relating to the same thing specified in the fourteenth amendment. It was not necessary to enact that particular provision unless we were dealing with an absolute and positive disqualification, because the Senate had already practiced the expulsion of a great number of Senators for being engaged in activities regarded as hostile and treasonable to the United States.

Again, if these are not what they appear to be, namely, disqualifications, why does the Constitution provide another thing which is called a disqualification, in another connection, namely, that a person may not hold any other office in the United States Government and still be a Senator? The Constitution prohibits that. In effect, it is a prohibition on the States.

We find that in article VI of the Constitution our fathers said to us, in effect, "The disqualifications which are spoken of are intended to proscribe the activities of the States." Hear what they said in article VI:

> The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Observe the difference between an affirmative statement, which we find here, and that which we are primarily discussing, which is a negative, or prohibitive, statement. Here the Congress of the United States is being addressed. The Congress of the United States is being told what it must do. First, it must require of those who come here as Senators-elect that they take an oath to support the Constitution of the United States; and, second, the Congress of the United States is told that no religious test shall ever be required as a qualification for the office of Senator of the United States.

Mr. President, further, with regard to the conduct of our forefathers, which indicates clearly their purpose to keep unto the Federal Government, the Republic, control over the authority and qualifications of Federal officers, and particularly of Senators, we have article I, section 4, clause 1, of the Constitution, reading:

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Mr. President, what else? Was there anything else which the people in the

Constitutional Convention wished to have the Federal Government or Republic delegate to the States with respect to the election of Senators? If so, why is it not there written? In other words, applying the ordinary rule, that when a specific thing such as fixing the time of holding an election is delegated, we know by the rule of construction that all other things not mentioned are excluded from the delegation; nothing is delegated but that which is expressed.

Here the times, places, and manner are delegated, but even that limited delegation to the States of control over the election of Senators is kept strongly in hand by the National Government, which is the living soul of unity of the people of the United States—namely, that—

> the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

It has been claimed here, in argument, that, since the disqualifications which are specified in this section of the Constitution are limited to three, and in the others of which I have spoken there are only two, making in all five, namely, age, citizenship, residence, participation in rebellion, and incompatible office, there are no other disqualifications. To my mind, that is an argument that works in reverse, and should be considered in connection with the affirmative section of the statute, to which I shall come shortly; namely, that the Senate shall be the judge of the qualifications of its Members; that is to say—

> Each House shall be the judge of the * * * qualifications of its Members.

So, over and against this narrow limitation upon the power of the States to send Senators or Representatives here, we have an affirmative grant by the people of the United States to the Republic of the power and the duty to pass upon all other things relating to the qualifications of Senators and Representatives.

Mr. MURDOCK. Mr. President, will the Senator yield?

Mr. AUSTIN. Yes.

Mr. MURDOCK. I do not want to interrupt the Senator unless he is perfectly willing to have me do so. With reference to his statement that we are to judge, and his former statement that we set ourselves up as a judicial tribunal for that specific purpose—that is, to judge of the qualifications—let me ask if the position the Senator takes is that we are acting judicially in exercising that function?

Mr. AUSTIN. I have not yet come to a discussion of that particular chapter. If the Senator will postpone his question temporarily, I should like to take it up in regular order in my discussion, instead of now.

Mr. MURDOCK. Very well.

Mr. AUSTIN. I shall try to conclude the discussion of disqualifications.

I have so far attempted to discuss the reasons why our forefathers changed the substance as well as the form of the original draft of the Constitution. Now I desire to take up some of the precedents wherein this very question has been tried out.

In 1 Hinds' Precedents of the House of Representatives, in the Brigham H. Roberts case, at page 528, we find this:

> We desire at the very threshold of this discussion to lay down these general propositions, never to be forgotten and always to be kept clearly in mind:
>
> First. That the House has never denied that it had the right to refuse to permit a Member-elect to be sworn in, although he had all of the three constitutional qualifications.
>
> Second. That it has in many instances affirmatively declared that it had the right to thus refuse.
>
> Third. That the right to so refuse is supported on principle and by the overwhelming weight of authority of constitutional writers and judicial opinions on analogous constitutional questions.

Mr. President, I was curious to find out how many cases have come to the United States Senate wherein the candidate was challenged by his own people, who either said that he had not been properly elected or that he did not have the qualifications. I may say that between the two there is quite a difference. I find that there have been, in all, 59 such cases. That is an imposing number, and they have been scattered throughout the history of the United States from the earliest times.

Among those 59 cases, there were 41 wherein the candidate was permitted to come in and take his oath and seat; but there was never broken the rule that his so taking his seat and taking his oath was probationary, upon condition, and subject to the result of the investigation of charges presented against him by his own people.

In 18 cases alone, the candidate was requested to stand aside, and did stand aside, and the investigation came first; but in all 59 cases we find that the Senate assumed the jurisdiction to decide, on the basis of a majority vote, the question presented by the petition of the public. There is not a single case that has sustained the claim which is now made here, and which has been made numerous times in our history, that the prohibitions, the disqualifications, constitute the only qualifications of the candidate who comes here and is challenged by his own people. Is not that an astounding fact? Has it not the weight and effect of absolute proof of what our forefathers intended and what the practical construction of both Houses of Congress is? What more is wanted? Mr. President, are we now going to adopt a resolution such as that of the Senator from Louisiana, and say that the Senate has no jurisdiction to test the moral character qualifications of a Senator-elect who at the door of the Senate is confronted by a petition from his own people challenging his moral qualifications? If now the Senate is going to declare its ineptitude, I think it will be a revolution that will affect the Senate until it reverses itself and gets back on the sound basis of truth, the sound basis of principle.

Mr. MURDOCK. Mr. President, will the Senator yield for a brief question?

Mr. AUSTIN. Certainly.

Mr. MURDOCK. Can the Senator give us the name of one case in our entire history where a Senator who was allowed to take his seat was afterward excluded by a majority vote?

Mr. AUSTIN. Oh, yes.

Mr. MURDOCK. What is it?

Mr. AUSTIN. There are a great many of them. I can give seven where the exclusion was for a similar cause as in this case. Although the gentlemen presenting themselves had credentials which were without flaw, yet they were excluded after they were allowed to come in here and take their seats on probation. I will read them. First, the John Niles case in 1843. That was a mental case. I think I can show just how long he had been here, for I have worked out a table which shows that he was a Senator from Connecticut from December 21, 1835, to March 3, 1839, and from May 16, 1844, to March 3, 1849. In that case the Senate assumed jurisdiction, heard the case, and found the facts against the petitioners. I read from the report of the committee:

> The committee are satisfied his election, return, and qualifications are legal and sufficient, and that it remains to inquire into his capacity at this time to take the oath prescribed by the Constitution.

Mr. MURDOCK. In that case did the Senate exclude?

Mr. AUSTIN. It did not exclude, but it took jurisdiction.

Mr. MURDOCK. I do not dispute that, but my question to the Senator is this: Is there any one case in our entire history where a Senator has been allowed to come in and take his seat as Senator LANGER has in this case, and on charges, not as to his election or not as to any constitutional disqualifications, as the Senator calls them, has thereafter been expelled or excluded by the Senate by a majority vote?

Mr. AUSTIN. Yes; there have been many. The case of Whittemore elected to Congress from North Carolina in 1870 is perhaps the most interesting and illuminating case in the history of Congress, so far as this question is concerned.

Mr. MURDOCK. I agree with the Senator that probably that case comes closest to being a precedent in point.

Mr. AUSTIN. I should like to put the list in the RECORD, because I think it may be well to keep the record straight, not that I am challenging the Senator from Utah.

Mr. MURDOCK. I do not want to appear for a moment as challenging the Senator. I merely want to get the matter straight in my own mind.

Mr. DANAHER. Mr. President, will the Senator from Vermont yield to me?

Mr. AUSTIN. Certainly.

Mr. DANAHER. As I understood, the Senator from Vermont, in his reply to the Senator from Utah, said that there were seven cases of exclusion for causes similar to those asserted and alleged in this case. Did the Senator make such a statement?

Mr. AUSTIN. I did not mean exactly that. What I meant was for causes other than the three which I am discussing which are, as I claim, disqualifications and not qualifications.

Mr. DANAHER. Mr. President, will the Senator yield further?

Mr. AUSTIN. Yes.

Mr. DANAHER. Then, the Senator said, "I will name them," and he commenced to name them, and cited first the Niles case.

Mr. AUSTIN. Yes.

Mr. DANAHER. That, of course, was a case where the applicant was not excluded by the Senate, but, quite the contrary; he was in the Senate from 1835, if I state correctly the dates given by the Senator, to 1839 and from 1844 to 1849.

Mr. AUSTIN. I see I have got to discuss each case fully in order to keep the record straight.

Mr. DANAHER. Mr. President, will the Senator yield further?

Mr. AUSTIN. Yes.

Mr. DANAHER. I was not questioning the Senator from Vermont in his citation of cases, nor do I require that he discuss each case, let me say. I thank him for his courteous forbearance with me at the moment, but I do wish to point out that the Whittemore case, for example, was the case of a Member of the House of Representatives and not a Senator; that the case of Niles was not a case of exclusion for causes similar to those alleged in this case, but, as the Senator has read, for exclusion because of inability to take an oath because of mental debility.

Mr. President, I do not know whether the Senator means to say that such a cause is similar to that under the facts prevailing in this case. If he does, I should like him to say so; if he does not, I should like him not to have us understand that the seven cases to which he has referred, where exclusion was voted, were for causes similar to those asserted in this case. I thank the Senator.

Mr. AUSTIN. I will try to be more specific, and try to be as exact as in a plea of abatement.

Now, let me complete the list of cases which I think are responsive to the question. I see that I have not fully answered the question of the Senator from Utah. What I am undertaking to do is to give the names from this list of cases where the candidate was challenged for some other cause than the three disabilities or disqualifications I have mentioned. I think that is a correct statement, and I will try to adhere to that line, if I can. The names of those cases are John Niles, a mental case, 1843; Henry M. Rice, a case of fraud and corruption in the sale of the Fort Crawford Reservation, 1858; Senator-elect Thomas, a disloyalty case, 1867; Representative-elect Whittemore, the sale of appointments, 1870; Representative-elect Roberts, polygamy, 1899; Senator-elect Gould, bribery, 1926; Senator-designate Smith, acceptance of money while he was chairman of a public utility commission from corporations that came within the jurisdiction and rulings of the commission, 1926.

I think I have named seven of such cases, and they are spread over a period from 1843 to 1926.

Since 1926 there have been several cases, jurisdiction has been taken, the facts have been found against the petitioners, and the candidates have retained their seats not only after having come into the Senate and taken the oath, subject to hearing, but after the hearing and report they have continued to occupy their seats. Then there are 59 cases—I am speaking now of the Senate alone; there are, of course, many others in the House of Representatives—but there are 59 cases of exclusion, including those which came under the clause I am now debating, namely, the disqualification clause, as well as those which came under the other clause relating to the duty of the Senate to judge of the qualifications of its members.

Mr. MURDOCK. Mr. President——

Mr. AUSTIN. I yield to the Senator from Utah.

Mr. MURDOCK. I agree with the Senator that there have been some cases where the Senate, at least in preliminary matters, assumed jurisdiction, but my question is: Is there one single case in the entire history of the Senate of a Senator who has been allowed to take the oath, as Senator LANGER has in this case, having been excluded by the Senate by a majority vote?

Mr. AUSTIN. Is the Senator now attempting to differentiate the construction placed on the Constitution by the House and that placed on it by the Senate?

Mr. MURDOCK. I am asking a simple question, I think.

Mr. AUSTIN. I do not see the relevancy of it, Mr. President.

Mr. MURDOCK. Let us even admit that it is not relevant; for my information and that of the Senate, has any such action ever been taken by the Senate; and if so, in what case?

Mr. AUSTIN. Mr. President, in the very case in which reliance has been placed by the Senator from Utah, the Reed Smoot case, we find the Senate taking jurisdiction even though the petition was brought by people in his State. Some 4 years—4 years; think of it—after he had been here, the Senate took jurisdiction and decided that the question really came up on whether his attitude while a Senator, while he was still in this body as a Member of this body, was such that he should be expelled. The question really resolved itself to that, although they took an original motion for exclusion and modified it by parentheses, calling for the action by a two-thirds vote, which occurs only when the occasion calls for expulsion. Thereupon the Senate voted not to expel.

The point is not what the Senate finally did; and that is why I say the question is irrelevant. The result of the action means nothing. The point is the exercise of jurisdiction. That is what is challenged here. In the amendment presented by the Senator from Louisiana we have a question of jurisdiction. The amendment in effect says to the Senate of the United States, "You cannot act upon this petition which comes from North Dakota because you have no jurisdiction outside of these prohibitions or disqualifications. You cannot pass upon qualifications; you cannot, as the Constitution says you shall, be judge of the qualifications. You can be judge only of disqualifications."

That is the effect of the amendment. It is an amendment challenging the jurisdiction, and I say the answer to it is the unbroken practice of both Houses, in the protection of their integrity, of allowing a candidate to come in, and, nevertheless, trying the question raised by a petition brought by the people of the United States or the people of the several States. That is what is important.

In 41 cases, I have shown, the candidate has been allowed to take his seat, and thereafter the question presented by the petition of his own people was inquired into. In 18 cases he has been asked to stand aside, and the inquiry was made before he was allowed to take his seat. That is the practice which has probative force here, that is the only thing that is necessary to be inquired into, not what the effect of each of those trials was. In a great many of them the candidate has been allowed to take his seat because the finding was that the challenge was without foundation. It was not because any such action as that now requested was taken. Never in the history of the Senate, never in the history of the House of Representatives, has this challenge been granted. Many times has the question been raised and discussed. The cases are full of discussion, where the same claim has been argued time after time, but in every one of the cases to which I have referred, 56 of them, jurisdiction was taken; and that is the point.

It is the inherent and constitutional duty of the United States Senate to protect and scrupulously guard its integrity, if constitutional liberty is to survive in this Republic. (1 Hinds' Precedents of the House of Representatives, p. 518.)

Brigham H. Roberts, at page 528:

"We desire at the very threshold of this discussion to lay down these general propositions, never to be forgotten and always to be kept clearly in mind:

"First. That the House has never denied that it had the right to refuse to permit a Member-elect to be sworn in, although he had all of the three constitutional qualifications.

"Second. That it has in many instances affirmatively declared that it had the right to thus refuse.

"Third. That the right to so refuse is supported on principle and by the overwhelming weight of authority of constitutional writers and judicial opinions on analogous constitutional questions."

At page 529:

"The provision seems to be worded designedly in the negative so as to prevent the suspicion that it was intended to be exclusive, and so as to prevent the application of the rule, 'the expression of one thing is the exclusion of another.'"

At page 530:

"We think that the civilized world would declare that it made itself ridiculous if it confessed its want of power to keep out from the councils of the Nation a man who was a confessed traitor."

On the question whether we should seat or not seat, we come to another issue, and that is the third chapter of my discussion. Our position about that is that "each House shall be the judge of the elections, returns, and qualifications of its own Members, and a majority of each shall constitute a quorum to do business. Observe that "a majority of each" is

hitched right onto the rest of the clause by a comma, it qualifies it, is a part of it, justifying the interpretation which has been made throughout history, that it is this organ of the Federal Government, this organ of the Republic, the Senate of the United States, that is the court which tries this justiciable question of the qualification of the member.

Mr. President, I was interrupted in my reading of the case of Whittemore, and I regard it important to read it in order for the RECORD to show the reasoning of the case, for I agree in that reasoning, especially as it was expressed by Gen. John A. Logan, who was a Member of the House at the time the Whittemore case was before them. He said:

It is said that the constituency had the right to elect such a Member as they may think proper. I say no. We cannot say that he shall be of a certain politics, or of a certain religion, or anything of that kind; but, sir, we have the right to say that he shall not be a man of infamous character. He is not merely a representative of the constituents who elected him, but his vote in the House is a vote for the whole country. It is a vote for the people of the whole country, and every district in the United States has the same interest in his vote that his own district has.

Hence, if Congress shall not have the power or authority, or shall not have the right to exclude a man of that kind, then the rights of the people of the whole country may be destroyed by a district sending a Representative who may be obtained to vote in a manner which may be destructive of the rights of the people. Are we to be told that Congress has no right to prevent anything of this kind because of the right of any constituents to send whomsoever they please? * * *

It is not that the people shall not be represented. Not at all. It is this: That the people of the country have no right to destroy their own liberty by filling Congress with men who, from their conduct, show themselves capable of the destruction of their Government. * * *

Congress, being the representative of the whole people, are entitled to say that the right of the whole country shall not be destroyed by one or more districts directing in here a man or set of men capable of their destruction; and they, having knowledge of the facts and the power to prevent the mischief by exercising the rights of exclusion, they having right to exercise that power and thereby protect the interest of the country and to preserve instead of destroy the right of representation.

In considering the Whittemore case and in weighing its value as a precedent it should be borne in mind that the charge complained of was an offense punishable by law but for which, under the Constitution, he was presumed to be innocent until proven guilty, and the offense was committed prior to the last election and the facts concerning the charge were known by the electorate prior to the election. It was not a case where the charges arose after the election nor after he had been sworn in. The Whittemore case is, therefore, a powerful precedent to establish the right of either House of Congress to reject a Member-elect.

I am very glad to have the admission of the Senator from Utah that that is a good case; but the case speaks for itself. Perhaps the best expression by text writers on constitutional law, so far as this question is concerned, is contained in Pomeroy's Constitutional Law, third edition, page 138, as follows:

The power given to the Senate and to the House of Representatives each to pass upon the validity of the elections of its own Members and upon their personal qualifications seems to be unbounded. But I am very strongly of the opinion that the two Houses together, as one House, cannot pass any statute containing a general rule by which the qualifications of Members as described in the Constitution are either added to or lessened.

Of course not, allow me to interpolate. The people of the United States imposed duties connected with determining or judging the qualifications of Members, imposed those duties upon the separate bodies, upon the Senate in the case of Senators, upon the House in the case of Representatives, and nobody else under the sun can exercise those duties. The Congress cannot exercise them. No State can exercise them

Holding the views I do about this principle of Federal strength and unity, which I would fight for, as I would fight for the independence of my State in respect to domestic affairs, it seems to me absurd to argue that it is left to the States to add to the qualifications, when there is no delegation in the Constitution to States save those which are expressly made with respect to the time, place, and manner of choosing Senators and Representatives, and even that delegation is kept within close bounds, subject to be changed at any time by Congress, excepting as to the place of choosing Senators.

The claim that we are only ambassadors of course expresses one real, underlying, fundamental error which makes men still claim that the Senate has not jurisdiction to pass upon the qualifications of its Members, and that the interpretation of "disqualifications" must be reversed, and it made to mean something else entirely, namely, qualifications.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. GEORGE. I remind the Senator that in the case of an Ambassador, the country to which he is sent always has the right either to accept him or reject him.

Mr. AUSTIN. I thank the Senator from Georgia, who certainly is an authority on foreign relations, having been chairman of the Foreign Relations Committee, and who is a very distinguished and learned international lawyer as well as constitutional lawyer. It is of some pleasure to me, Mr. President, to be associated in view with the Senator from Georgia on this important fundamental question which we are debating in the Senate. We are upon the verge of doing something terrible if we are to reverse the history of the United States, as we would do if we denied our jurisdiction for the cause stated in the amendment submitted by the Senator from Louisiana [Mr. OVERTON].

Mr. GEORGE. I may say on that point that I fully agree with the Senator from Vermont. The question here is not the right of any State; the question is the right and power and duty of this body, as a branch of the legislative body created by the Constitution, and I regard the amendment submitted by the distinguished Senator from Louisiana as presenting a far more important question than whether Mr. LANGER shall keep his seat in this body at this time. If the Senate should agree to the amendment it would be a blow struck at the long and glorious history of the Senate of the United States, but it would be one, Mr. President, which, of course, no future Senate would regard or would be bound to regard, because under the Constitution each Senate, as and when organized, becomes the absolute judge of what it will do with respect to admission to membership or expulsion from the body after membership has commenced, subject only to the one restriction that expulsion must be by a two-thirds vote and not by a majority vote.

Mr. McNARY. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. McNARY. Is it the thought of the distinguished Senator from Georgia that the amendment submitted by the able Senator from Louisiana does not raise the question of whether it takes two-thirds vote to expel or whether it can be done by a majority vote?

Mr. GEORGE. The amendment submitted by the Senator from Louisiana is a demurrer, it is a speaking demurrer, it is a demurrer to all that the Senate Committee on Privileges and Elections has done, because it says in effect, "Regardless of what the evidence may have disclosed, if the provisions contained in the Constitution with respect to age, residence, and the other qualifications are met, the Senate has no further concern about the matter." It is a demurrer to the whole evidence. It is a denial of the power, of the right, and of the jurisdiction of the Senate to inquire beyond the mere prohibitive provisions contained in the Constitution.

Mr. McNARY. I regret to ask the Senator from Vermont to yield to me of his time for just another inquiry.

Mr. AUSTIN. I am glad to yield.

Mr. McNARY. It had occurred to me that the proper course probably would be to insert after the language of the amendment submitted by the Senator from Louisiana that action should require two-thirds of the vote of the Senate. I assume the able Senator would not object to the presentation squarely before the Senate of the question whether action required a two-thirds vote or a majority vote.

Mr. GEORGE. That question is squarely presented in the first section of the committee's resolution, on which the chairman of the committee has asked for a vote.

Mr. McNARY. There is a question about that. I doubt if that provision is properly formed, if one wishes to be technical about it.

Mr. GEORGE. I do not wish further to take the time of the Senator from Vermont.

Mr. McNARY. Is the interpretation which the Senator places on the amendment submitted by the able Senator from

Louisiana, that it is not a fair presentation of the question whether two-thirds vote of the Senate is required to expel?

Mr. GEORGE. It may be susceptible of that interpretation, but it goes far beyond that. It is a direct denial of the power of the Senate to entertain jurisdiction of any case respecting the right of a Member here to a seat, when the negative conditions set forth in the Constitution are not themselves directly involved.

Mr. BONE. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield for a question. I cannot yield for a speech. My time runs out at 3:30.

Mr. BONE. I am impelled to ask about a particular aspect of the problem, because I have seen its parallel or its substantive parallel in some municipal operations. Suppose the Senate should repel Senator LANGER by whatever vote is decided to be a proper vote, and that the people of North Dakota should reelect him as Senator, and he should again present himself at the bar of the Senate. What sort of a legal problem would then confront us? I can conceive the possibility of that very thing happening, because it has in effect happened in the western section of the country on a number of occasions, when officials have been recalled by the people, and then have been triumphantly reelected to the same office. So I think we have to confront the possibility of such a thing occurring. If the people of North Dakota should feel that we have not treated the Senator fairly in repelling him, and were to reelect him, would not this whole problem again be dumped into our laps, and would we not be confronted with even a worse angle legally than that which now confronts us?

Mr. AUSTIN. Mr. President, that is not a relevant question. It cannot affect our decision as judges. That question has no force at all upon our decision today. The consequences of our decision are not important, excepting those consequences which affect the moral power of the Senate of the United States among the people and in the world. Those are the consequences which count. The question of what will happen to an individual, to a single citizen, is nothing by comparison with that. This is the kind of question that bears upon the reason for the rule which we assert: What would be the position of North Dakota or any other State in the Union if it could not challenge at the door a Senator-elect for having committed murder which had not been discovered at the time of his election? What would be the consequences if in that case the rule which is imposed upon the people for persuading the Senate of the United States were so sweeping that action must be taken by a two-thirds vote? Such a rule would be against all reason. It would be against the theory of our Government that we should demand of the people that they persuade us to that degree when they come here with their petition. That is why the framers said in the Constitution, "You, as an organ of this Republic, the Senate of the United States, you as a court and not as individuals, not by two-thirds vote, but by a majority vote of the Senate, shall judge not only of the election, but also of the qualifications of the Senator-elect." That is what we are called upon to do.

Mr. President, we are not confronted by a proceeding to expel or oust a man from the Senate who is a Member of it. We are confronted by a petition from the citizens of North Dakota to exclude, and I think it would be utterly absurd for us to answer in the affirmative the amendment submitted by the Senator from Louisiana and say to the people of the United States for the first time in all our history that we are inept, that we do not have any authority, that we cannot pass upon any other qualifications than those set out in the Constitution.

Mr. President, I think we do have respect for the decisions of the Supreme Court—I do—and when I find myself making claims which are in line with the decisions of the Supreme Court I certainly feel much more persuaded to the thought I am trying to present than I would be otherwise. My persuasions became convictions. In the case entitled "In re Chapman, Petitioner," which will be found in One Hundred and Sixty-sixth United States Reports, page 661, I call attention to the following extracts. They are brief and in point:

> Under the Constitution the Senate of the United States has the power to try impeachments, to judge of the elections, returns, and qualifications of its own Members; to determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member; and it necessarily possesses the inherent power of self-protection.

Mr. President, that is a declaration of common sense. It is a declaration of principle that is a part of the civilization of Anglo-Saxon people. In all times since the twelfth century legislative bodies that claim to be free or semifree have had the inherent power, without any express delegation to them by the people in a constitution, to protect themselves from a murderer or any other criminal, or any man who so conducts himself in public office that he is a menace to law and order, that he is an encourager of insurrection or an inciter of strikes and riots.

We have the inherent power to protect the Senate of the United States, and we have the duty under the Constitution. We have been charged by the people of the United States to perform that duty.

The case from which I have read has other things in it which are applicable to our question. Those things relate to how the courts look upon transactions between a public officer and those against whose interest he should act, or is obliged under his oath to act. This question arose over a resolution which directed a committee of the Senate to inquire "whether any Senator had been, or is, speculating in what are known as sugar stocks during the consideration of the tariff bill now before the Senate." The Court said:

> What the Senate might or might not do upon the facts when ascertained, we cannot say, nor are we called upon to inquire whether such ventures might be defensible, as contended in argument, but it is plain that negative answers would have cleared that body of what the Senate regarded as offensive imputations, while affirmative answers might have led to further action on the part of the Senate within its constitutional powers.

In other words, within its constitutional powers it can act upon a case in which a public officer has gone into the market and dealt in the subject matter which is under consideration, which may be affected in value by the action which he takes in this body.

> Nor will it do to hold that the Senate had no jurisdiction to pursue the particular inquiry because the preamble and resolution did not specify that the proceedings were taken for the purpose of censure or expulsion, if certain facts were disclosed by the investigation. The matter was within the range of the constitutional powers of the Senate. The resolutions adequately indicated that the transactions referred to were deemed by the Senate reprehensible and deserving of condemnation and punishment.

That is a bright light to have shine into the gloom of a great public body taking the attitude which has been taken here and treating the most remarkable history of misconduct in public office which I think the Senate has ever had before it as though it were a thing to be excused if any possible technicality can be found by which to wash our hands of the very odious job of passing judgment upon a fellow Member.

Mr. President, the Senate of the United States as a body is on trial. What happens to us as individuals is nothing; but what happens to the Senate of the United States is of the greatest import at this time in the world's history.

On the question of moral turpitude this case also throws light:

> The right to expel extends to all cases where the offense is such as in the judgment of the Senate is inconsistent with the trust and duty of a Member.

Note the phrase "of a Member." That statement relates to the right to expel. The Court deals with some of our parliamentary history. It takes up the editorial discussion of this subject by Mr. Justice Story and points out that Mr. Sergeant commented upon the Blount case, to which the Senator from Ohio referred the other day. The Blount case was a case of expulsion, in which the offense was committed during membership. I am now reading from what the Supreme Court of the United States said:

> Commenting on this case, Mr. Sergeant says in his work on Constitutional Law, second edition, page 302: "In the resolution, the Senate declared him guilty of a high misdemeanor, though no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case. And it seems no law existed, to authorize such prosecution."
>
> The two houses of Congress have several times acted upon this rule of law—

Reference is made to the rule of law that there is no limitation upon the power and duty of the Senate to pass upon the qualifications of Members. They are not obliged to wait until the man charged with murder has been tried and convicted, as some of the opponents of the report of the committee have asserted on the floor of the Senate during

this debate. They are not obliged to wait until State authorities or Federal authorities have brought an indictment and determined the criminal proceedings one way or the other. It is their duty to proceed when the challenge occurs and the facts appear. It is their duty to protect this organ of the Republic, indispensably required to be pure.

Mr. President, perfection alone is invulnerable. Nothing less than protection will keep the Senate invulnerable. Let us not forget it. We cannot afford to compromise, quibble, and fiddle when we have a duty presented to us as it has been presented in this case by a petition which is supported by the confession of the respondent. We cannot wash our hands by some clever device to sidestep the issue through legal questions. Such legal questions do not intervene. The duty of the Senate must be performed directly and promptly by the Senate.

I continue to read:

> The two Houses of Congress have several times acted upon this rule of law; and the cases may be found, together with debates on the general subject, in both Houses, of great value, in Smith's Digest of Decisions and Precedents, Senate Document No. 278, Fifty-third Congress, second session. The reasons for maintaining the right inviolate are eloquently presented in the report of the committee in the case of John Smith, accused in 1807 of participating in the imputed treason of Aaron Burr.

Let me read to the Senate the brief statement to which the Supreme Court of the United States refers.

Mr. REED. Mr. President, will the Senator yield to me for the purpose of suggesting the absence of a quorum?

Mr. AUSTIN. No; I do not want a quorum call. I observe that 15 Senators are present. One can draw his own conclusions.

Mr. CONNALLY. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. CHANDLER in the chair). Does the Senator from Vermont yield to the Senator from Texas?

Mr. AUSTIN. I do not yield.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. CONNALLY. I am sorry. I was only trying to help the Senator. I do not want to disturb the Senator.

Mr. AUSTIN. This is the statement to which the Supreme Court of the United States refers:

> The power of expelling a Member for misconduct results on the principles of common sense from the interest of the Nation that the high trust of legislation should be invested in pure hands. When the trust is elective it is not to be presumed that the constituent body will commit the deposit to the keeping of worthless characters. But when a man whom his fellow citizens have honored with their confidence on the pledge of his spotless reputation has degraded himself by the commission of infamous crimes which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a Member, which should have no remedy of amputation to apply until the poison had reached the heart. (Ibid. 937.)

With respect to what I have just read the Supreme Court said, in the case to which I have referred, at page 670:

> The reasons for maintaining the right inviolate are eloquently presented in the report of the committee in the case of John Smith—

That is the thing to which the Supreme Court refers.

In other words, on principle, by the unbroken practice, and by adjudication of the highest judicial authority in the world, the Senate of the United States has jurisdiction to pass upon the qualifications of its Members; and such an amendment as that offered by the Senator from Louisiana [Mr. OVERTON], asserting that it does not have jurisdiction, ought to be turned down unanimously. In my opinion such a declaration would be the greatest confession of weakness, the lowest low in the admission of incapacity, that the Senate as an organ of government of the people of the United States ever reached.

Of course, the case would be ended were the answer in the affirmative. It would be a quick acting soap with which to wash our hands. We could not then pass on to the question of whether the petition of the people of North Dakota had been established by the evidence and by the confessions of the respondent. We would be helpless. We would say to the world, "Oh, we could not pass on those questions; we had to stop, because we did not have jurisdiction to pass on them. This man came here with three things certified: His age—all right; his residence—all right; his citizenship—all right." Then we could not act as judge of his qualifications, though the people of his own State stopped him at the door of the Senate, and presented a petition to us, and said, "Judge him. Here are the facts; judge him."

As stated by the distinguished Senator from Georgia, with respect to the amendment, which amounts to a challenge to the jurisdiction of the Senate of the United States to protect the people in this very important organ of their Government, affirmative action on the amendment would be more devastating to the influence, the respect, the moral power of the United States Senate, than any decision which we could make upon the merits of this issue.

Mr. President, I have been rather abstruse, and have taken too much of the time of the Senate, but I have tried to clear the question, so that it would be apparent that the thing the Senate is about to do, the thing the Senate should do with the utmost care, is to judge of the qualifications of the Senator-elect as though he were now standing at the door of the Senate, and had been standing there since the time when the petition was presented by his people.

It may be of no probative force against him that he came here, not by a majority of the votes of his people, but out of a three-cornered fight in which he received a little more than one-third of all the votes cast in the election. It may be nothing whatever against him that that is so; but, on the other hand, it is not well that the Senate should admit that they cannot pass upon his qualifications with respect to moral turpitude because his people have passed on it. No! His people have not affirmed that he has the qualifications of a Senator, that he has the moral qualifications of a Senator.

I know that the Senate has suffered in listening this long while to the evidence of misconduct in public office; for nothing else was charged, nothing else was tried. The specific issues were drawn by the respondent himself, not by the committee. The complaint frequently made here, that the committee took into account misconduct in 1911, going back years in the history of this man, cannot be properly aimed at the committee. If Senators will examine the report, they will see that certain chapters of it deal only with the testimony of the respondent; they do not deal with any other matter at all. They are indexed by time as well as by page; the time begins in 1911 and continues through to his election; and the finger is pointed definitely to what the respondent said. We do not have to get the corroboration of any witness if we want absolutely to satisfy our own conscience that we have not done wrong in passing judgment on this matter. Stand only upon the testimony of the respondent himself, which, let me observe, Senators will find came originally either from his own initiative or by questions of his own counsel. He was guarded; he had numerous counsel right there with him all the time, he is not like a person who comes into the witness chair without knowledge of his obligations and of his rights. He is a lawyer, and he knows the legal consequences, he knows the probative effect, of his volunteering information. Apparently he wanted the committee to know the life story of BILL LANGER, and he gave it unblushingly, as if he regarded it as a thing to be proud of—laughing off a fist fight in court with a fellow lawyer; boasting of seizing a telephone exchange, armed with a gun and surrounded by others in masks, disguised; in fact, participating like a police officer when he was a prosecuting officer, an officer of the court whose duty and business it was to keep his hands out of that kind of a transaction and attend to the business of presenting to the court the evidence which police officers get, keeping himself free from the brimstone that comes from acts of that kind.

Thus, he told us of a lifetime in which he held many public offices, but never having held one without committing acts that showed the utmost disregard for law and order—searches without warrant, entering jails, removing prisoners. Think of the disregard for law that is expressed in the act of an attorney of the court having himself deputized for the purpose of opening a jail and removing from it a man who has committed an unbailable offense, a man charged with murder in the first degree, not entitled to bail, and yet his counsel, for the purpose of obstructing justice and preventing a witness—the sole eyewitness of the murder—from testifying against him, entered the jail, and not only removed the man from the jail, but took him out of the jurisdiction, where the peace officers of the State could not reach him. He could not be apprehended where Mr. LANGER took him; he took him beyond the boundaries of the State, to commit the act of obstruction to judicial process in a murder case—a man who has so little regard for the State which is

the institution which is absolutely necessary for the protection of the lives of its citizens from murder, a man who assisted a criminal by going out of his office as an attorney, to do two of the most unethical things ever heard of as being done by an officer of the court; and yet we wash our hands of responsibility to consider such matters.

I say, do not complain of the committee, do not complain that it considered testimony about a lifetime of misconduct. Such testimony was voluntarily given by him, and any reading of that testimony will reveal the most peculiar attitude toward it, as if such misconduct were perfectly all right, as if there were nothing wrong in it. Think of a man testifying about an affair in which he broke down the door to the office of the jail, and by assault on the jailer, obtained access to the desk drawer containing the key to the cell, after a fight with the jailor, overpowering him, he broke in and got the key and went to see his client. Oh, Senators, frontier life would not justify that. Even among men who are absolutely obliged to be alert all the time, there is this principle necessary, and this principle observed; that laws, rural though they may be, have always been found necessary, and a respect and regard for those laws was necessary for the safety of the whole community, and particularly is that true in the case of the administration of the criminal law.

Mr. President, you may take any block of years you want to from 1911 until Mr. LANGER was elected a United States Senator, and, from the testimony, you will not be able to escape the evidence of utter disregard for law and order in office. As State's attorney, attorney general, Governor, and commissioner passing upon the taxes and the valuation of property, every piece of that history has the same characteristics.

If you like best, as I do, to take those events which are nearest to his election as United States Senator, what do you see? They are knit together as an entire unit. The visit to the lawyer of the railroad company to sell something that was not salable: the deal with the broker who made $300,000 commission under Governor LANGER's administration, both were the product of what had occurred in 1934, 1935, 1936 1937, 1938, and 1939. They are related together according to the testimony. Mr. LANGER says, "Brunk helped me in the prosecution of the conspiracy case; Brunk helped finance me; Brunk came and visited me for a week afterward; Brunk did this and he did that"; and he told Brunk how hard up he was. He did undoubtedly become hard up from the effects of those prosecutions. That is the way they are connected with this transaction.

On the other horn of the dilemma was the lawyer representing a railroad company, Thomas V. Sullivan. Mr. LANGER said—I am dealing with the confessions of the Senator-elect—"Thomas Sullivan offered to act as attorney for me without pay in those prosecutions." They are all tied together. What do we find, without wearying the Senate except to refer to cases of the grossest misconduct? To begin with, the overt act of using his office as Governor to obtain subscriptions from State employees and also a few Federal employees. For what purpose? To build up the political party that would enable him to remain in power. Mr. President, if we do not regard that overt act as evidence of moral turpitude, causing us to take it into account seriously with all the other things, let us see how the court regarded it.

Remember, Mr. LANGER was convicted. To be sure, he said he had an unfair trial; but there were 12 men who found him guilty; and again there were 10 out of 12 who found him guilty on a retrial. In the meantime, however, between the two trials the circuit court of appeals had reversed the first trial. Did the court reverse the facts regarding the overt misconduct? No. The reversal is upon the proposition of conspiracy to impede the administration of the law of the United States, and the court held that a conspiracy which involved the employees of the State did not come within the jurisdiction of the Federal court. What, however, did they say further about the overt act? It is such things that show the character of the man; they are the things that bear upon the truth or falsity of the petition of the people of North Dakota.

I read from page 826 of Federal Reporter, second series, volume 76:

> Defendant LANGER in his testimony on the subject says—

The court also, it will be noted, stood on Senator LANGER's testimony, as I am doing—

> "The system of getting subscribers that I devised was this"—

This is from Mr. LANGER's testimony—

> "I felt that an employee who held a position under the State government owed, at least, sufficient duty to the administration to be willing to go out and assist the administration in securing a large circulation for a weekly newspaper I felt that if they sold newspapers or subscriptions to an amount of totaling 5 percent of their annual salary that that would not be asking anything too much of them, especially in view of the fact that the salaries of all of the State officials themselves—as distinguished from employees—had just been reduced 20 percent by the passage of a law."

That is the end of the quotation from which I wish to read.

Then I skip to the bottom of the column, where the following appears:

> It is not claimed that the overt acts charged in themselves constituted substantive offenses. Unless there was such a conspiracy, the conviction of appellants cannot be sustained. Whatever we may think of the ethics or propriety of the practice employed by appellants to secure funds for political purposes, it is not a matter of concern to the Federal Government, unless some lawful governmental function was thereby obstructed. In other words, a conspiracy or plan to assess State employees was not an act violative of any Federal statute, and hence, so far as the Federal court is concerned, not criminal. So far as the direct evidence of any plan or conspiracy for the collection of these funds is concerned, it was confined to the assessment of State employees. We have searched the records diligently for direct evidence of any plan beyond this, and counsel for the Government have called our attention to no such testimony.

In other words, the court obviously made its decision, not upon the overt act, but upon the question of whether that act itself was a violation of a Federal statute over which the court could take jurisdiction.

The court said further on page 827:

> Even participation in the offense which is the object of the conspiracy does not necessarily prove the participant guilty of conspiracy. The evidence must convince that the defendant did something other than participate in the offense which is the object of the conspiracy. There must, in addition thereto, be proof of the unlawful agreement and participation therein, with the knowledge of the agreement.

What is the effect of that decision in our consideration of this particular matter of misconduct in office? That decision wipes away the claim that the United States Circuit Court of Appeals had given some sort of an exoneration for the act. On the contrary, the court indirectly referred to it as an overt act of misconduct in office.

So, we see that all these acts are tied together. The employment of Leedom and Wyman is a part of the whole plan. One could not sit through the testimony of Mr. LANGER without getting the impression that he was in a tight place in that trial. I got the impression that the trial was about as tough a trial as any man ever had to undergo. I have no doubt whatever that the temptation upon Mr. LANGER and his friends to do what they did do as a consequence of it was very great; but it should not have been done, just the same, however great the temptation. Such a thing must not be done because it is a violation of law, to say nothing of ethics, and I am taking it only as Mr. LANGER himself looks at it. I am addressing myself to this thing on his view of the matter for the sake of argument. He says, "I had an unfair trial. They meddled and tampered with the jury. The judge himself was hostile to me." I am just assuming that in what I have to say. He said, "I would do it again. The respondent has a perfect right to protect himself in a trial of that kind by watching the jury." No; he has not. The court will protect him. He does not have to go and hire a man from out of the State who had formerly been a United States marshal and who is a friend of the trial judge, have him occupy a room just across the hall from the jury, and load him up with money.

Really, Mr. LANGER's description of how he was going to have this job done shows the most astounding attitude toward it. I do not need to read the testimony; Senators have probably read it themselves. about how he spoke of the money, and about how this man Leedom was a great actor, who could pretend he was drunk and nobody would know he was not drunk, how he could ingratiate himself with the boys and could do this job.

Let us assume that it was nothing more than the job of watching. Mr. President, that is an offense against the law, that is an obstruction to justice. It is not necessary even to let the jury know it. There does not have to be any effect of it getting to the jury, or

keeping anyone away from a jury, or anything of that kind. But for a litigant, particularly a respondent under a charge of conspiracy to obstruct the administration of the Federal laws, this employment of someone, even if he were a paragon of virtue, to watch the jury and to watch the marshal and the clerk of the court, is a stench in the nostrils. However great the temptation to do it, the respondent should go to the court with his claim that he is not getting protection. It would be ten times as effective as this idea of putting a watcher across the hall in the hotel to watch the door of the jury room. The court would protect him, and that jury would be placed where no one could get at it.

Do we need to be galvanized; do we need to have our consciences pricked, in order to react to this sort of conduct in office? Then let us consider what the court has said. I refer to the highest court of the land and in its decision in the case of Sinclair against the United States. All the claims we have heard made here about the Federal Government using spotters, spies, and detectives to watch juries were made in that case. The defense which is made here that it was conduct provoked, and conduct which should have been offset by similar conduct was made in that case, and the Court said this about it:

> The evidence does not disclose that any operative was instructed to approach, or did approach a juror, nor does it disclose that any juror actually knew that he was being shadowed. Some were suspicious. The court did not know, nor does it appear that Sinclair's counsel knew, the jury was being shadowed.
>
> Called as a witness, Day gave rather full account of himself from his youth up, including his Army service. He was not permitted to say that he had knowledge of a practice by United States attorneys to shadow juries in criminal cases after they were sworn.

That was in the recital of what appeared in the record in the lower court, as this highest court passed upon it. The Supreme Court said this about what the trial judge did:

> The trial judge held the petition stated a case upon which appellants might be adjudged guilty of contempt and the evidence showed their guilt. Among other things, he said: "I cannot escape the conviction therefor, that respondent Sinclair, respondent Day, Respondent Sherman Burns, and Respondent W. J. Burns have been, perhaps in different degrees, all involved—more or less directly involved—in the establishment of this surveillance, a surveillance which I have already announced in my opinion constituted an obstruction to the administration of justice by this court."

Again the Supreme Court said:

> After close of the evidence and arguments, and after the court had declared appellants were guilty of contempt, counsel announced that upon the question of mitigation they re-offered the evidence tendered but excluded during the main case as to the custom of the Department of Justice to place juries under surveillance. This was overruled.

The Court held:

> Under the doctrine so stated, we think the trial judge rightly held it unnecessary to allege or show actual contact between an operative of the detective agency and a juror, or that any juror had knowledge of being observed.

This is the point:

> The reasonable tendency of the acts done is the proper criterion. Neither actual effect produced upon the juror's mind nor his consciousness of extraneous influence was an essential element of the offense.

I skip now, and read again, at page 765:

> If those fit for juries understand that they may be freely subjected to treatment like that here disclosed, they will either shun the burdens of the service or perform it with disquiet and disgust. Trial by capable juries, in important cases, probably would become an impossibility.

As to the evidence offered for countervailing misconduct by the Government itself, the Court said:

> During the hearing and before conviction of guilt counsel proffered many witnesses by whom they proposed to show a practice of the Department of Justice to cause its officers to shadow jurors. This evidence was rightly excluded. That department is not a lawmaker and mistakes or violations of law by it give no license for wrongful conduct by others.

I leave that right there. The Senate is the judge.

Connected with this, and a part of this transaction with Brunk in which Mr. LANGER sold his land to the only person he could get to buy it in those times, and sold his Mexican stock to the counsel for the railroad company, as a matter connected by his narrative and by the circumstances, we find this connected also with these trials, the inciting to riot, and the declaration of independence of the State. What an amazing exhibition of disregard for law and order that is, he and his companions getting into a huddle and declaring the independence of the State of North Dakota, for the purpose of declaring martial law, then the subsequent declaration of martial law, but most of all the suspension of civil process. This is the Governor, this is misconduct of a man in his office. We may go anywhere throughout his life, from 1911 right by this period and up to the last before he came here, and we find the same characteristics. He makes no bones of it, he does not seem to think that is immoral. He does not seem to regard this as the most offensive kind of civil disobedience because it comes from the Governor of the State. Disobedience by the normal, ordinary citizen is bad enough, but when the Governor of a State flouts the law, and when he has an interest to protect himself against the service of civil process, that is, the process of ouster, then I say there is a circumstance which cannot be explained away, which cannot be colored, which cannot be washed off our hands, when the people of North Dakota come to us and say, "Judgment."

Mr. President, if an ordinary deputy sheriff abuses his process, the citizen has his remedy. If he exceeds the power of his writ the citizen always has a remedy. Can it be that the people of North Dakota have no remedy when a man comes to the Senate with a record shown by the petition presented by citizens of that State, and sustained by his confessions?

Mr. President, we do not have to go outside Mr. LANGER'S testimony; we do not have to have testimony or proof beyond what he confesses. In our public service a man may not have two masters. A man, while governor, and head of a commission which has to pass upon the valuation of railway property in his State for purposes of taxation, cannot deal with the attorney of that railroad to any advantage at all for himself. We do not have to go further than Mr. LANGER himself went when he said that first he had had one talk, just one talk, with Thomas V. Sullivan about taxes, in which Sullivan wanted him to be sure to stick to the valuations of a certain year. He had that talk in March. Then in May we find Mr. LANGER in Chicago, in the office of this man. What for? For only one thing, as appears by his testimony. There Mr. LANGER makes the proposition of sale of his Mexican stock. I say we do not need to go any further than Mr. LANGER represented the State. Mr. testimony at 100 percent value and say that the stock was worth all he paid for it, yet Mr. LANGER has done this. His moral attitude is gone, absolutely gone. Morally he was vis-à-vis, this man Sullivan.

Mr. Sullivan represented an interest which was opposed to the State. Mr. LANGER could not serve both of those interests morally. He could serve only the State. The minute he took advantage of that relationship of opposing conflicting interests to find a market for that which he could not sell to anybody else, the deed was done that marked him, marked him in his office. That is the kind of man he is in office. We do not need to go beyond that.

Moreover, it was the same with the Brunk transaction. To whom could this land be sold? To anybody? Let us assume it was worth 100 cents on the dollar. Let us assume that it was sufficiently valuable to pay off its encumbrances of $28,000, its back taxes of $6,500, and the purchase price of $58,000, making a total of approximately $80,000—let us take it at that value, yet could he sell it? He testified that the depression of those days was such that there was no sale for land anywhere. Did he go to anyone else to sell it? No; he went to the man who was his vis-à-vis, the man whose interest was opposed to the interest that Governor LANGER represented, and he sold his land in that market, a market where he could not have sold it excepting that these interests were vis-à-vis.

The committee did go beyond that. The committee did make further findings, and I will testify that I think they were well grounded. But we do not need to go further than that. Those two transactions, coinciding in May 1938, show the character of the man to be exactly what the petitioners claim it is. We are dealing with the petition of inhabitants of North Dakota. While Governor of the State, Mr. LANGER availed himself of the opportunity afforded by being in a position to veto the business of Mr. Brunk. There is not any question about it.

I have heard arguments made in attempt to show that the Governor could not touch these county commissioners. Oh, pshaw! The Governor could and did touch them, and his touching of them

set an example for all county commissioners, which was, "Deal with Brunk if you want to get by with this kind of a transaction." Mr. Mueller, another broker, tried it, and the county commissioners were removed from office by the Governor because they had dealt with Mr. Mueller instead of going direct to the State institutions and marketing their bonds, as they had a right to do, and as all county commissioners had a right to do, and as they had a right to do in every one of those cases in which Mr. Brunk made his large commissions.

I am sure the Senate will excuse me for not picking up this testimony and reading it. There has been so much reading of the testimony already that Senators must be weary of it. So far as I am personally concerned I ought to disregard my feelings in the matter, because I am performing a duty which is extremely obnoxious to me. I do not place myself on a pedestal over my fellow men. I do not personally claim to be any holier, or purer, or nearer perfection than any other of my fellow men. It is not a personal thing to me. But as a member of the United States Senate I sat through every day of the taking of testimony here, holding my mind ever stable and open for acquittal of the charges presented in the petition. I think I never wrestled with myself more than I did—and I had to—throughout this case, trying to reconcile all the evidence, and every bit of the evidence, to such a theory that we could deny the petition of the people of North Dakota here and seat Mr. LANGER. To perform our duty we must envisage ourselves, each one, as the composite Senator. We must perceive our duty jointly as the Senate judging upon an issue raised by citizens of the United States and of the State of North Dakota.

Believe me, it is not a pleasant duty to perform, but I stayed in the committee meetings day after day, and my assiduity was due largely because of my sense of the deep, important questions that are involved here, because we have two of the most fundamental questions to decide. One is a question of fundamental law, which affects the status of the United States Senate and its ability to protect itself and the people it represents, the people of the United States, as well as the people of North Dakota. The other one is the moral question which is involved here. Those questions are so grave that no matter how disagreeable the task may be, no matter that the infallible man has not been born yet; yet I think every Senator should bravely face the responsibility and do his duty.

Mr. DANAHER. Mr. President, will the Senator yield?

Mr. AUSTIN I yield.

Mr. DANAHER. I should like to ask the Senator from Vermont if, in the view he takes of the origin of the petition from petitioners in North Dakota, he would extend the same right of petition against this same applicant for a seat in the Senate in favor of the citizens of any other State?

Mr. AUSTIN. Mr. President, I do not understand the question.

Mr. DANAHER. I shall reframe it. I tried to take into account all the elements the Senator had mentioned. Perhaps I thus encumbered the question. The Senator has discussed the matter of our duty to act upon a petition of protest filed by citizens of North Dakota against the seating of this applicant. I ask whether or not it would likewise be our duty to consider a protest against the seating of Senator LANGER if that protest emanated from the citizens of another State?

Mr. AUSTIN. That, of course, is an academic question. My own view, however, is that we would have that duty to perform. That is my view of the United States Senate. I consider that when we departed from the Confederacy and entered into a Union constituting, as Franklin characterized it, a Republic, the people of the United States created something which did not exist before. It did not come by delegation of any of the domestic powers of the several States or of their people. It sprang from the new union of all the people; and they created their own government.

So we now have a phenomenal thing, and that is two governments occupying the same geographical limits. It is a perfectly wonderful thing that the two governments can have jurisdiction within the same geography and never really conflict. To me the Constitution, in respect of its creation of the National Government, the Republic, is one of the most remarkable exhibits of statesmanship and lawgiving that the world has ever seen. There is nothing that equals it. The framers of our Constitution made it easy for this union of the people of the United States to keep that which held them together always strong, always indissoluble. Even though we have had war, we have kept it united, and we have given a vitality to it, not merely by the blood of our forefathers, but by countless acts, including our transactions in the Senate with respect to the qualifications of Senators.

We have given life to that provision of the Constitution which deals with the office of Senator. It is a United States office. We are not ambassadors. We are Senators of the United States. For years and years we have adhered to that principle, in spite of the attacks which have been made upon it in nearly every one of the 59 cases. It is a superb history. It is a glory to the Senate of the United States. It is of the essence of the moral life of the Nation, upon which we rely in the storms and stresses through which we are passing today.

To me it would be the saddest thing that could happen for the Senate now to agree to a proposal which challenges its jurisdiction. To me that would be the last thing to do. It would be a denial of the living soul of our Government, namely, the unity of the people of the United States, which is the most sacred thing we have to defend.

Mr. VANDENBERG. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. SPENCER in the chair). Does the Senator from Vermont yield to the Senator from Michigan?

Mr. AUSTIN. I yield.

Mr. VANDENBERG. I should like to have the Senator's view upon this phase of the matter, because it has considerable bearing upon my point of view.

In the Senator's view of the situation, is there any point at which the people of North Dakota, by their votes, could wash away, so to speak, a moral turpitude which had been found by the Senate of the United States? In other words, granting for the sake of argument that moral turpitude exists, and assuming that the Senator from North Dakota were excluded and were reelected to the Senate, in the Senator's opinion what would be the situation which we should then confront?

Mr. AUSTIN. I do not like to answer that question, but I shall do so.

Mr. VANDENBERG. If it is not a fair question, I do not wish to submit it.

Mr. AUSTIN. Of course, the question is fair; and yet it embarrasses me in this way: At one time early in the hearings in this case I felt that if the people of North Dakota had acted in the election of Mr. LANGER for Senator of the United States with full knowledge of the worst things—I am not talking about the lesser things, but, as I see it, there are five or six things in this case which are so important that they cannot be disregarded—I would not vote to exclude him.

That is rather a confession of weakness on my part, which relates to the heart more than it does to the head. When all the evidence in the green book came out in printed form, so that I could really study it, I made an examination of it to find out if the people had known the facts. I could not find anything. They knew a little—just enough to make it a good cause to elect him on the ground of martyrdom—but they did not know the whole story of the really immoral acts. They knew nothing about those acts which willfully endangered the security of the State.

Then I examined the newspapers which were offered as exhibits in the case. There were four newspapers, which I expected to have with me today. It is just as well that I do not have them, because, if I had them, I would take further time of the Senate. I examined them time after time to find out if the facts had been disclosed.

I could not find them, so I said to myself, "I may be wrong about it." I had two other persons go through the evidence, but they could not find anything.

When the committee met I said, "I am not going to decide this matter without knowing this fact. I have tried my best to find the evidence that the public acted at the polls with knowledge of the important facts." I named them. There were five of them. They are named in the report of the committee. I separated them so that Senators may know what they are. I said, "I want the help of the committee. Can any member of the committee point out any piece of evidence which would justify the claim that the people acted with knowledge?" It could not be done.

Mr. LANGER himself testified about knowledge. His statement appears on page 501 of the record. Perhaps I should turn to it so as to make no mistake in stating what he said. He was talking about a certain case brought for

slander, and the settlement and retraction by a newspaper of statements which it had made. The following occurs on page 501:

Senator LANGER. Then, I might mention the case against the Courier News, a daily newspaper in Fargo, N. Dak. When I ran for Governor, they commenced to write me up, and in this case, the paper had said that while I was a member of the board of equalization that I had dealt with the Northern Pacific Railroad Co. in reducing their taxes; that was one charge, and they had another charge——

Senator WILEY. That was when you ran for Governor in 1920?

Senator LANGER. They had another charge that I had refused to prosecute the Standard Oil Co.

I have before me a recent book which was given to me by its author, who is a friend of Senator LANGER. The author is John M. Holzworth. He was present throughout a good deal of the hearing. I think he was present throughout the taking of the evidence. I read from page 109 of the book entitled, "The Fighting Governor," published in 1938:

LANGER AND THE RAILROADS

The Courier-News had several times stated that Mr. LANGER was a corporation attorney working hand-in-hand with the railroads operating in North Dakota but investigation of this shows that he has been the greatest enemy of railroad control that the railroads have encountered in North Dakota.

As county attorney of Morton County, aided by the tax commission, he fought in the district and supreme courts to a successful conclusion the case of the Northern Pacific Railway Co. against Morton County and compelled the railroads operating in North Dakota to pay 6 years' back taxes on assessments aggregating $30,000,000, consisting of 2,038 licensed elevator sites, 1,000 lumber yards and their warehouse sites, and 260 oil tank station sites upon the right-of-way of the railroad companies within this State. The case is reported in volume 32 of the North Dakota reports, page 627.

After Mr. LANGER became attorney general the railroads endeavored to raise their freight rates 15 percent. He called into conference the railroad comissioners, and together with M. S. J. Aandahl, chairman of the board of railroad commissioners, and Mr. Little, the rate man, went to Washington. At Washington they found the railroads well organized and the States disorganized. The States were organized and Clifford H. Thorne, now attorney for the United States Grain Growers, and Professor Norton, of Yale University, an expert on the Adamson law were retained. Later Mr. LANGER and his assistant, Judge Bronson, personally spent 3 weeks in Washington assisting Mr. Thorne. He personally conducted part of the investigation before the Interstate Commerce Commission and took the testimony of various witnesses.

The final result was that the Interstate Commerce Commission did not allow the increase in the freight rates in North Dakota although they were raised in some of the eastern States and based on the 1915 crop yield over $1,000,000 was saved to the farmers and producers of North Dakota grain alone.

Here is the retraction:

With these facts of record as they are, the Courier-News hereby retracts any statement made either directly or indirectly that WILLIAM LANGER is "a tool of the railroad interest," and states that there was no foundation for the charges thus made.

That was in 1920. The transaction with the attorney for the railroad company, in Chicago, in connection with the Mexican land business was in May 1937. Certainly, in 1920, the Courier-News was not publishing to the people of North Dakota anything at all about what happened in 1937; nevertheless, the testimony, if it were not checked, would give the impression that the people of North Dakota voted with information, through that retraction, of the misconduct of the Governor of North Dakota in selling his property to the counsel for the railroad company who had a pending lawsuit and who had a future issue to come before the commission of which the Governor was chairman, and in which he would have a deciding vote.

He said, "Then I might mention a case against the Courier-News," and so on. That was said when he was telling about all the matters that had been brought to the attention of the public of North Dakota, and all the different lawsuits, and the publicity given to them and the political discussions which grew out of them; all that was said in order to convince us—as he did convince me for the time being—that he was elected by the people with knowledge of those matters.

However, when I came to check up the papers that he held up—saying, "There are four newspapers that cover all these questions except the Gale Wyman one"—I found that they were not published at a proper time for that, as I pointed out in the report; and, on reading them, we found that they do not contain anything about those five charges.

So, in further answer to the Senator from Michigan, if I have not gone too far, I should say that there might be an effect upon the judgment of individual Senators—an effect which I think would be unfortunate, and yet one which the frailty of human nature permits; there might be the effect of giving to that vote the probative force of a finding of fact; but it is my opinion that, as a matter of law, it would have nothing whatever to do with our duty when the question is properly raised and becomes an issue between the people and the Senator-elect. No matter how many times he may have been elected with the same facts before them, no matter how much the people knew of the charges that were made against him, still the Senate is the judge of the charges contained in the petition, and must pass upon them when the petition comes to the Senate.

As I have said, these facts might have probative force in influencing us to decide the questions in a certain way, but that is a bridge we cannot cross and should not cross.

I desire to conclude.

I feel that on the questions raised by the petition we have two decisions to make, and that we should make them. The first one is that we have jurisdiction to try the qualifications of any Senator-elect who comes here, either to seat him or not seat him pending the hearing, to go through with the hearings to an end, and finally to decide upon the question of his qualifications. To my mind, such jurisdiction is important for the security of the State; and, therefore, our decision relative to it is a very grave act, with respect to which we must not do wrong; we must pass upon it correctly.

Then we come to the question—which will be decided by a majority vote if we have passed on the other question correctly—the question of whether in this case the facts alleged in the petition have been established, and the respondent should be excluded from the Senate by virtue of lawlessness charged in the petition, by virtue of his light regard for law governing his duties and their performance, defiance of lawful authority of the State, willfully endangering the security of the State upon which the rights of all citizens depend, and, finally, destroying the moral capital of the office of governor of the State—one of the States of this Union.

On that question every Senator will exercise his own judgment. As we know, 13 of the members of the committee found that the Senator-elect had, by his own response to the petition, in effect admitted the charges contained in the petition, and that he was not entitled to a seat in the Senate.

I want it understood that I do not ask, and I consider that it is not the duty of the committee to ask, any Senator to follow the committee. I am not undertaking to impose my views upon any Member of the Senate. I am trying to present the attitude of the committee, its regard for its duty, its devotion to the object of serving the people, and its effort to transact this very difficult and disagreeable business of acting as judge and, unfortunately, as advocate at the same time.

Some time, Mr. President, after this case is over, and when it cannot be affected by statements of what we may think about procedure, I shall have something to say about the question of procedure in such cases in the future. However, at present, I shall say no more. I leave the discussion of this matter at this time.

PETITIONS AND MEMORIALS

Petitions, etc., were laid before the Senate or presented and referred as indicated:

By the PRESIDENT pro tempore:

A resolution by the City Council of Lorain, Ohio, protesting against the proposal for the Federal taxation of municipal bonds; to the Committee on Finance.

A paper in the nature of a petition signed by The Merrills and postmarked at Glendale, March 16, 1942, praying that new and fully equipped airplanes be promptly dispatched to assist the armed forces, formerly under the immediate command of General MacArthur, at Corregidor, Province of Luzon in the Philippine Islands; to the Committee on Military Affairs.

By Mr. CAPPER:

A letter in the nature of a memorial from the United Trades and Labor Council, of Pittsburg, Kans., signed by Ira Hall, financial secretary of the council, remonstrating against the adoption of any proposal to change the 40-hour workweek for labor as provided under existing law; to the Committee on Education and Labor.

A petition, numerously signed, of sundry citizens of Kansas City, Kans., praying for the enactment of the bill (S. 860) to provide for the common defense in relation to the sale of alcoholic liquors to the members of the land and naval forces of the United States

and to provide for the suppression of vice in the vicinity of military camps and naval establishments; ordered to lie on the table.

WOMEN'S ARMY AUXILIARY CORPS—ENLISTMENT FOR AIRCRAFT WARNING SERVICE—PETITION

Mr. DAVIS. Mr. President, I ask unanimous consent to present a statement in the nature of a petition from a group of Philadelphia women at present working as volunteers with the United States Army Air Force Interceptor Command. I request that their petition be printed in the RECORD, without all the names attached thereto, and referred to the Committee on Military Affairs.

There being no objection, the statement or petition was referred to the Committee on Military Affairs and ordered to be printed in the RECORD without all the names attached thereto, as follows:

PHILADELPHIA, PA., *March 21, 1942.*

Hon. JAMES J. DAVIS,
United States Senate Office Building,
Washington, D. C.

DEAR SENATOR: We, the undersigned, are at present working as volunteers with the United States Army Air Force Interceptor Command in Philadelphia, Pa. We would like to call to your attention certain phases of the Women's Auxiliary Army Corps bill. This bill has been passed by the House of Representatives and is now before the Senate.

The portion of the bill in which we are interested is that section which applies to the enlistment of 12,000 women for the Aircraft Warning Service. As the bill now stands, there is a provision that enlistment in the Women's Army Auxiliary Corps permits the Army to move an enlisted woman anywhere in or out of the United States.

A large majority of the undersigned workers of the Philadelphia interceptor command are married women with children (and certain home responsibilities), who, naturally, would be unable to enlist because of the above proviso.

We are trained workers who have been faithfully and patriotically giving regular service to the Philadelphia interceptor command since the inception of war. We wish to continue to do so. We would be most eager and willing to enlist in the Women's Army Auxiliary Corps for aircraft warning service, under the following changes:

1. That we be allowed to enlist and not to be transferred out of this service or out of our present localities without our consent.

2. That we be allowed to live in our own homes.

We feel privileged in making the above request both because of our loyalty and devotion to our country, and because, if this war is to be won, every citizen of the United States will have to help. We are trained to do a job, and we want a chance to continue it.

We trust that you, as our Senator, will give this letter your serious consideration.

Respectfully submitted.

The Volunteers of the Philadelphia Information Center: Mrs. Toby L. Sleif, 326 South Nineteenth Street, Philadelphia, Pa.; Mrs. Gladys G. Kaufman, 1701 Locust Street, Philadelphia, Pa.; Frances S. Perkins, Bryn Mawr, Pa.; and sundry other citizens of the Philadelphia area, Pennsylvania.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BROWN, from the Committee on Claims:

H. R. 710. A bill for the relief of Martin N. Mayrath; without amendment (Rept. No. 1212);

H. R. 3722. A bill for the relief of Lt. Col. S. W. McIlwain; without amendment (Rept. No. 1213);

H. R. 4625. A bill for the relief of Karl K. Wilkes; without amendment (Rept. No. 1214); and

H. R. 5363. A bill for the relief of Johnston-Hall Hospital, Calhoun, Ga., and Dr. Z. V. Johnston, Calhoun, Ga.; without amendment (Rept. No. 1215).

By Mr. ROSIER, from the Committee on Claims:

S. 2235. A bill for the relief of Harriett Boswell, guardian of Betty Fisher; without amendment (Rept. No. 1216); and

S. 2278. A bill for the relief of Bob Sampley; without amendment (Rept. No. 1217).

By Mr. SPENCER, from the Committee on Claims:

S. 1756. A bill for the relief of Franklin Benjamin McNew; with an amendment (Rept. No. 1218).

By Mr. HUGHES, from the Committee on Banking and Currency:

S. 2250. A bill to mobilize the productive facilities of small business in the interests of successful prosecution of the war, and for other purposes; with an amendment (Rept. No. 1219).

By Mr. WALSH, from the Committee on Naval Affairs:

S. 2285. A bill to provide for the retirement, with advanced rank, of certain officers of the Navy; without amendment (Rept. No. 1220);

S. 2286. A bill to authorize inclusion of service on active duty as service on the active list in computation of service of commissioned warrant officers in the Navy for pay purposes; without amendment (Rept. No. 1221);

S. 2288. A bill to amend subsection 11 (b) of the act approved July 24, 1941, entitled "An act authorizing the temporary appointment or advancement of certain personnel of the Navy and Marine Corps, and for other purposes"; without amendment (Rept. No. 1222);

S. 2327. A bill to provide for payment and settlement of mileage accounts of officers and travel allowance of enlisted men of the Navy, Marine Corps, and Coast Guard; without amendment (Rept. No. 1223);

S. 2381. A bill to provide that certain provisions of law relating to the Navy shall be held applicable to the personnel of the Coast Guard when that service is operating as a part of the Navy; without amendment (Rept. No. 1224);

S. 2382. A bill to amend the act approved June 24, 1926, entitled "An act to authorize the construction and procurement of aircraft and aircraft equipment in the Navy and Marine Corps, and to adjust and define the status of the operating personnel in connection therewith," so as to provide for the establishment of the designation of naval aviation pilot (airship), and for other purposes; without amendment (Rept. No. 1225); and

H. R. 4151. A bill to authorize the acquisition by the United States of lands lying between the present boundary of the Naval Air Station, Lakehurst, N. J., and the new boundary of Fort Dix, in the county of Ocean and State of New Jersey; without amendment (Rept. No. 1226).

By Mr. DANAHER, from the Committee on the Judiciary:

S. 2399. A bill to amend the act entitled "An act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes," approved June 8, 1938, as amended; without amendment (Rept. No. 1227).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. WALSH:

S. 2409. A bill to authorize the acquisition by the United States of certain lands adjacent to the Navy Yard, Boston, Mass.; to the Committee on Naval Affairs.

By Mr. THOMAS of Oklahoma:

S. 2410. A bill for the relief of John Hamilton; to the Committee on Military Affairs.

By Mr. BULOW:

S. 2411. A bill for the relief of William R. Laurence; to the Committee on Military Affairs.

By Mr. PEPPER:

S. 2412. A bill to provide benefits for the injury, disability, death, or enemy detention of civilians, and for the prevention and relief of civilian distress arising out of the present war, and for other purposes; to the Committee on Education and Labor.

HOUSE BILL REFERRED

The bill (H. R. 5695) to amend the Civilian Pilot Training Act of 1939 so as to provide for the training of civilian aviation technicians and mechanics was read twice by its title and referred to the Committee on Commerce.

AMENDMENT TO AGRICULTURE DEPARTMENT APPROPRIATION BILL

Mr. THOMAS of Oklahoma submitted an amendment intended to be proposed by him to House bill 6709, the Agriculture Department appropriation bill for the fiscal year ending June 30, 1943, which was referred to the Committee on Appropriations and ordered to be printed, as follows:

On page 79, between lines 14 and 15, insert the following:

"Reimbursement of participants in cotton producers' pool: Not to exceed $4,320,000 of the funds of the Commodity Credit Corporation shall be available for the purpose of enabling such corporation to pay, and such corporation is authorized and directed to pay pursuant to such regulations as the Secretary of Agriculture may prescribe, to any holder of record, as of May 1, 1937, of a participation trust certificate (Agricultural Adjustment Administration Form C-5-I of the 1933 Cotton Producers Pool a sum equal to $2.40 per bale for each bale which such certificate evidenced that such holder held in such pool. Payments made under the provisions of this paragraph shall be deemed to be in full and complete satisfaction of the claims of the payees against the United States for reimbursement of the amounts charged to them as carrying charges on the cotton which they held in such pool."

WOMEN IN WAR INDUSTRIES—ADDRESS BY MARY ANDERSON

[Mr. SHIPSTEAD asked and obtained leave to have printed in the RECORD an address by Mary Anderson, Director of the Women's Bureau, United States Department of Labor, entitled "Women's Jobs in War Industries," which appears in the Appendix.]

SYNTHETIC RUBBER PRODUCTION

[Mr. SHIPSTEAD asked and obtained leave to have printed in the RECORD an article from the Chicago Sun of March 25, 1942, under the headline "Charge United States and industry blocked synthetic rubber," which appears in the Appendix.]

ADDRESS BY MOST REVEREND FRANCIS J. SPELLMAN, ARCHBISHOP OF NEW YORK

[Mr. WAGNER asked and obtained leave to have printed in the RECORD an address delivered by Most Reverend Francis J. Spellman, Archbishop of New York, on the radio program of the Fourth Degree Knights of

Columbus, March 22, 1942, which appears in the Appendix.]

WAR PROFITEERING—EDITORIAL FROM ATLANTIC CITY PRESS-UNION

[Mr. SMATHERS asked and obtained leave to have printed in the RECORD an editorial relating to war profiteering, published in the Atlantic City Press-Union of March 5, 1942, which appears in the Appendix.]

SENATOR FROM NORTH DAKOTA

The Senate resumed consideration of the resolution (S. Res. 220) declaring WILLIAM LANGER not entitled to be a United States Senator from the State of North Dakota.

Mr. BUTLER obtained the floor.

Mr. McNARY. Mr. President, will the Senator yield to me so that I may suggest the absence of a quorum?

Mr. BUTLER. I yield.

Mr. McNARY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Glass	Overton
Austin	Green	Pepper
Bailey	Guffey	Radcliffe
Ball	Gurney	Reed
Bankhead	Hayden	Reynolds
Barbour	Herring	Rosier
Barkley	Hill	Russell
Bone	Holman	Schwartz
Brewster	Hughes	Shipstead
Brooks	Johnson, Calif.	Smathers
Brown	Johnson, Colo.	Smith
Bulow	Kilgore	Spencer
Burton	La Follette	Stewart
Butler	Langer	Taft
Byrd	Lee	Thomas, Idaho
Capper	Lucas	Thomas, Okla.
Caraway	McCarran	Thomas, Utah
Chandler	McFarland	Tobey
Chavez	McKellar	Truman
Clark, Idaho	McNary	Tunnell
Clark, Mo.	Maloney	Tydings
Connally	Maybank	Vandenberg
Danaher	Mead	Van Nuys
Davis	Millikin	Wagner
Doxey	Murdock	Walsh
Ellender	Murray	Wheeler
George	Nye	White
Gerry	O'Daniel	Wiley
Gillette	O'Mahoney	Willis

The PRESIDING OFFICER. Eighty-seven Senators having answered to their names, a quorum is present.

Mr. BUTLER. Mr. President, I have hesitated to inject myself into the long and tedious debate which has been in progress now for about 3 weeks on the floor of the Senate, and I can assure the Senate that my remarks shall be very brief; nevertheless, I feel that, as a member of the committee, it is proper, and perhaps required, that I should express myself to some extent.

Unfortunately for me, at least, I was made a member of the Committee on Privileges and Elections. I say "unfortunately" because of my experience on the committee. Ordinarily I think there has been little work for the committee to do, and I hope, after this unpleasant incident is closed, that it will be a long time before the committee is again called upon to consider such a dispute.

The Committee on Privileges and Elections has had two rather difficult tasks: First, the settlement of the contest which arose in West Virginia, and then the question of seating the Senator from North Dakota.

My hesitancy to participate in the debate on either of these cases is due to my conviction that the discussions have been based largely on technical, legal interpretations. I am totaly unprepared to add anything to what has been contributed by the distinguished legal talent on each side of the case under consideration. However, when men of great legal talent are unable to agree or even to come close together on what to them appears to be the important legal phases involved in the case under consideration, I ask what are we to do who are not students of the law? Is there a place in the consideration of this case where something other than purely technical legal interpretations may be properly considered? My answer to the question is in the affirmative. There is properly a moral question involved, one that must be answered by the conscience of each Senator for himself.

It does not take a member of the bar to say in this case that the Senator from North Dakota is of legal age, that he has been 9 years a citizen of the United States, and was a qualified elector in the State at the time of his election and appearance before this body. Neither does it require a member of the bar to read the section of the Constitution of the United States which says:

> Each House shall be the judge of the elections, returns, and qualifications of its own members.

To me, as a layman, there can be no question of our right and our constitutional and moral duty to give consideration to the qualifications of any man who is met at the door of this body with a protest such as the one in this case. No member of the committee and no Member of the Senate had anything to do with the opening of this unfortunate situation. It was brought here by the people of North Dakota. Like other members of the committee, I listened to many weeks of testimony. At the beginning and all through the close of the hearings it was my intention to vote for the seating of Senator LANGER. Then it may be asked why did I sign, with 12 other members of the committee, the report which was submitted to the Senate? That is a proper question, and I am willing to give my answer.

I gave consideration to the "qualifications" clause of the Constitution. Suppose Mr. LANGER'S name was before the Senate today for confirmation as a judge of the Federal Court for the District of North Dakota, rather than to become a United States Senator from North Dakota. In the light of all the undisputed testimony in this case, would the Senate confirm Mr. LANGER'S appointment as Federal judge? I think not; I am almost certain he would be denied that great honor and position of responsibility.

Then, may I ask, in a spirit of sincerity to duty, how can we vote to seat a man as a Senator whose duty as a Senator is to pass on the qualifications of men selected for the Federal courts?

Mr. President, I have arrived at my own answer. To quote the distinguished Senator from Vermont [Mr. AUSTIN], who has just spoken, my answer may be "more of the heart than of the head."

Mr. President, when it is difficult or impossible to arrive at a decision by the logic of law, the head route, then I say it is one's duty to use his common sense, his conscience, the heart route. I cannot escape living with my conscience.

Mr. DANAHER obtained the floor.

Mr. McNARY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Glass	Overton
Austin	Green	Pepper
Bailey	Guffey	Radcliffe
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Bankhead	Hayden	Reynolds
Barbour	Herring	Rosier
Barkley	Hill	Russell
Bone	Holman	Schwartz
Brewster	Hughes	Shipstead
Brooks	Johnson, Calif.	Smathers
Brown	Johnson, Colo.	Smith
Bulow	Kilgore	Spencer
Burton	La Follette	Stewart
Butler	Langer	Taft
Byrd	Lee	Thomas, Idaho
Capper	Lucas	Thomas, Okla.
Caraway	McCarran	Thomas, Utah
Chandler	McFarland	Tobey
Chavez	McKellar	Truman
Clark, Idaho	McNary	Tunnell
Clark, Mo.	Maloney	Tydings
Connally	Maybank	Vandenberg
Danaher	Mead	Van Nuys
Davis	Millikin	Wagner
Doxey	Murdock	Walsh
Ellender	Murray	Wheeler
George	Nye	White
Gerry	O'Daniel	Wiley
Gillette	O'Mahoney	Willis

The PRESIDING OFFICER. Eighty-seven Senators having answered to their names, a quorum is present.

Mr. DANAHER. Mr. President, I doubt that in the course of this debate there can be a more sincere and more earnest argument advancing the point of view of a Senator acting under his oath than that to which we have just listened, submitted to us by the senior Senator from Vermont [Mr. AUSTIN]. I doubt that in the course of the long, gruelling consideration, under most trying circumstances, of this difficult case before the Committee on Privileges and Elections, there ever was a time when any member of the committee relaxed his vigilance, his sense of propriety, his sense of balance, or his judgment. I think every member of the committee who has considered the report which we have received from the committee has acted according to his oath and in good conscience in presenting to us the matter in the form in which we have found it.

It has seemed to me, from an examination of the original record of the executive session of the committee, wherein consideration of what was appropriate procedure in this case was first undertaken, that there existed an unusual degree of confusion both of thought and as to a course of action. Since that particular record was taken in executive session and appears before us only in a confidential print, I shall not refer to any of the observations made by Senators by name. Any of my colleagues may have access to the particular volume, from which and from the comments of the committee members, he will readily see the confusion of mind which existed in the approach of the committee itself to

a consideration of the problem confronting it. It is not to disparage the work of the committee, then, that I make reference to that point; quite the contrary. It is by way of having my colleagues here realize the unusual problem confronting the committee.

So far as I can perceive, there is no member of the committee who at any time in his service upon it ever had been called upon to consider a case of expulsion of a Senator for misconduct while a Member of this body; nor do I see that any member of the committee was ever called upon to consider a case of exclusion of a Senator from being permitted to take the oath as a Senator of the United States because of some alleged offense of which the applicant had not been earlier convicted. In short, Mr. President, such experience as the committee itself had had, through the learned lawyers and others of our colleagues who grace its membership, had been confined entirely to those cases of elections and returns in which frauds were involved, the very type of thing which, if established, vitiated an entire election, just as we all know that fraud vitiates every act it affects. It is not to be wondered at, therefore, that there was no common understanding of just exactly what steps the committee should take in the premises.

An examination of the original petition which was filed by certain citizens of the State of North Dakota under date of December 21, 1940, which I hold in my hand, indicates that the petitioners felt "That WILLIAM LANGER, Senator-elect of the State of North Dakota, does not represent a majority of the electors of said State, and that he, by reason of his acts in North Dakota, is not qualified or entitled to be United States Senator. We do herewith petition the honorable Members of the United States Senate to refuse the said WILLIAM LANGER a seat in said body, and in support of said petition we submit the following facts:"

Whereupon there are narrated allegations to indicate that Mr. LANGER had received some 38 percent of the total vote cast in North Dakota—and still they do not dispute that that number was sufficient for his election; that he once had been convicted of conspiracy in a Federal court in North Dakota—but that conviction had been erased on appeal; that he had been, on suspicion, at least, so far as the allegations are concerned, involved in one matter or another in which it was claimed moral turpitude was revealed.

In short, Mr. President, there was no allegation whatever, in any form whatever, which would give the Senate jurisdiction to inquire into the "elections" or "returns" within the constitutional language, unless it were to be found in subparagraph (d), in which it appears—

that at and during a State-wide meeting of the Republican State Central Committeemen at Devil's Lake, N. Dak., on or about July 19, 1940, Mr. LANGER promised one Thomas Whelan—

Whelan had been an opposition candidate at the general primary—

that he would support him for the State chairmanship nd give to him or the committee one-half of the Federal patronage in North Dakota if Whelan and the committee would support him, LANGER, for the United States Senate in the fall campaign. This was agreed to.

I shall not read further, but if ever there was a case of what the law calls a nudum pactum, it lay in the assumption on the part of Mr. LANGER that if elected as a Republican Senator he was going to get any patronage, much less be able to give half of it to Mr. Whelan. [Laughter.]

In any event, Mr. President, abandoning all facetiousness, it becomes perfectly apparent that when the senior Senator from Kentucky [Mr. BARKLEY], as he very properly did, permitted the applicant to take the oath "without prejudice"—and those were his words—he did it without prejudice to whatever rights the Senate had, and without prejudice to whatever rights the candidate had at that time. But when those rights which the Senate thus reserved in fact had been exhausted, when it developed, after hearings, that there no longer were any rights of inquiry as to elections and returns, as to which the Senate had a right to conduct further inquiry, it followed that whatever reservation previously had been made as to Mr. LANGER's right to take his seat had also been dissipated.

Consequently, the committee having found expressly, as it reports to us, that there was no irregularity in the election, that there was no fraud, that there was no question about the returns, it follows that the committee had exhausted whatever jurisdiction it then had, unless we can find that the committee had some right to pursue further an inquiry into the matter of what were the qualifications of the applicant.

Thus, Mr. President, we come squarely down to what is the only issue before us, whether or not there was any jurisdiction remaining in the Senate to inquire into some matter with respect to which rights were reserved when the Senator from Kentucky said that he would permit the applicant to take the oath without prejudice.

Mr. President, if anyone wishes to inquire into what the qualifications of the applicant were when he presented himself to take the oath, when he first came to the Senate, he must look to the Constitution itself primarily for a declaration of whatever disqualifications might exist. These disqualifications have been expressly listed by the Senator from Vermont and many others of the able Senators who have argued this question. The disqualifications need not be repeated. Long before an individual came to the Senate and offered himself, there arose the question of the existence of certain qualifications which were prescribed by the States themselves. As to such qualifications, whatever they were or whatever they are in any given case, we in the Senate have no voice whatever.

To illustrate the point, with reference to an alleged offense as to which there has been no conviction before a candidate comes to this body and presents himself, is it not singular that in all the years of our national existence we have no statute which would say that a man is ineligible by reason of his having committed a crime, no matter how infamous, to aspire to and to take a seat in this body? Never have we ever proclaimed any such doctrine.

Mr. MCNARY. Mr. President, will the Senator yield?

Mr. DANAHER. I yield.

Mr. MCNARY. I may be in error, but I recall from reading, particularly in reference to this and similar cases, that in 1866 Congress passed the test oath of loyalty, right after the Civil War, when feelings and emotions ran high. That test oath was called forth and attempted to be used in the case of Thomas, a Senator from Ohio, who was tried for sending his son into the Confederate Army, but it was abandoned because it was generally agreed it was adding to or attempting to superadd to the qualifications described in the Constitution. I think the Senator should bear that in mind. It only illustrates the futility of trying to do something we could not do.

Mr. DANAHER. I thank the Senator from Oregon for his contribution. Since the Senator has diverted my attention to that particular line of thought——

Mr. BROWN. Mr. President, will the Senator yield?

Mr. DANAHER. I yield.

Mr. BROWN. I asked the same question of two Senators who spoke on the side of the majority of the committee, and I find that the situation was not exactly as it was stated to me by the Senators who answered my question, and, begging the pardon of the Senator from Oregon, not exactly as he stated it to the Senate.

In 1862 the Congress of the United States adopted a statute, such as the Senator from Oregon has described, and it remained upon the statute books for a matter of a few years. In 1866 it was evidently deemed by the Congress that such a statute was not within the power of Congress to enact. In other words, that the qualifications, as the Senator from Connecticut [Mr. DANAHER] has stated, had been laid down in the Constitution, and could not be changed by anything other than a constitutional amendment. So a constitutional amendment was proposed, and finally adopted in 1866, which prevented men who had previously been Members of the Congress, either of the Senate or the House, from taking the oath if they had participated in the War between the States. That, I think, is an accurate historical statement of the situation, and is substantially the same as the Senator from Oregon has outlined it, but I think that something is added to the argument he makes by pointing out that Congress did enact such a statute in 1862, and subsequently supplemented it, or supplanted it rather, by a constitutional amendment, the fourteenth amendment.

Mr. DANAHER. And, Mr. President, let it be noted further that in the fourteenth amendment we even provided that the disqualification could be removed by a two-thirds vote of both Houses.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. DANAHER. I yield.

Mr. GEORGE. I think the Senator will find that the thirteenth, fourteenth, and fifteenth amendments, insofar as they were restrictions on rights, were definitely restrictions on the powers and rights of the States, and therefore that the State could not send a man here who, having previously taken an oath to the Constitution, had engaged in insurrection. Of course, it is agreed that the Congress of the United States cannot superadd any qualifications for a Senator or for a Member of the House, but for an altogether different reason, and one that goes to the very vitals of this question, because it is not a legislative power. Either House—not both Houses—is the sole judge of matters which pertain to the conduct or to the privilege of sitting as a Member of that House. Of course, Congress can pass no such law as that, because the particular House itself at the moment is the judge of the matters. Even if we should pass a law today, tomorrow it would have no effect whatsoever on another Congress which would assemble. That carries us to the bottom of the thing, if we want to face it, and that is that when we create a coordinate branch of the Government and vest in it legislative power, we give to that branch of the Government, necessarily, the power to control the conduct of its own membership, and the only single exception to it is when in the instrument creating the Congress or the House or the Senate, as the case may be, there are limitations placed upon that power. It is not a legislative power at all, and, of course, a law passed by the Seventy-third Congress would have no possible effect on the Senate or the House in judging of the qualifications or the election, for that matter, of a Member who came and demanded entrance into either House.

Mr. DANAHER. Mr. President, it is a singular thing that when the Constitution was adopted—taking the view that has just been expressed by the Senator from Georgia for the present purpose—in section 2 of article I we provided—

That—

As to Members of the House—

the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

There was no reference then in any slightest particular to what qualifications must be had by the electors for Senators, the reason being, of course, that the Senators were chosen by the legislatures of the several States. The United States had nothing whatever to do with it, outside of the constitutional language. Whoever were to be chosen electors in a given State had the sole right under the laws and constitution of that State to select their own membership to their own State legislatures, who in turn selected anyone they chose to the United States Senate, only saying that he was not disqualified by the expressly stated constitutional disqualifications to which we have adverted.

Mr. President, that that may be the more apparent, let it be noted that it was not until the seventeenth amendment to the Constitution was passed, within our easy memory, that we ever adopted a provision to the effect—and I read—that—

The Senate of the United States——

The PRESIDING OFFICER (Mr. SPENCER in the chair, at 3:30 p. m.). The Chair calls the attention of Senators to the fact that at this time the unanimous-consent agreement entered into on yesterday goes into effect, under which no Senator shall speak more than once or longer than 30 minutes on the pending resolution or any amendment or motion relative thereto.

Mr. DANAHER. I thank the Chair.

I read now from the seventeenth amendment to the Constitution.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Mr. LUCAS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LUCAS. I beg the Senator from Connecticut's pardon. I did not hear the ruling made by the Chair.

The PRESIDING OFFICER. The Chair stated that at this time the unanimous-consent agreement entered into on yesterday goes into effect.

Mr. LUCAS. I thank the Chair, and I beg pardon of the Senator from Connecticut.

Mr. DANAHER. Mr. President, overlooking entirely the 2 minutes which the Chair and other Senators have taken from me, I shall proceed to read from the seventeenth amendment:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for 6 years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Never, Mr. President, until the seventeenth amendment became law, was there any stricture imposed upon, or any applicability in any way whatever of the Constitution of the United States to the choice of those representatives of the States chosen to be United States Senators, other than that they meet the matter of the testing disqualifications laid down in the Constitution itself.

Mr. President, let us historically think of another thing. In my own State we never even had a constitutional convention to write a State Constitution until 1818; we had no Federal Constitutional Convention, expressly so convened, to ratify the Constitution of the United States, nor even to pass on the various amendments to the Constitution of the United States, until it befell me, as secretary of the State for Connecticut in 1933, to organize such a convention that we might adopt the twenty-first article of amendment to the Constitution of the United States. As a matter of fact, it was not until 1939 that we even ratified the first ten amendments to the Constitution. [Laughter.]

Mr. President, I mention such a thing to point up the inquiry, who between 1789 and 1818 was prescribing the basis for selecting the candidates for the United States Senate from Connecticut, and in accordance with what standards were they selected, and in accordance with what "qualifications"—and I use the word "qualifications" this time in quotes just as though I extracted from the Constitution? Obviously, we in Connecticut did it.

Let us turn to Rhode Island, Mr. President. Rhode Island did not have a constitutional convention until some time around 1842 or 1843; and then, Mr. President, over in Rhode Island, where there was still a Crown government in control, the people finally decided that they would have a constitutional convention of their own.

I see the senior Senator from Rhode Island [Mr. GERRY] present, and I will recall to him that it led to such a state of rebellion within the State itself that Dorr's Rebellion, as we have come to know it, led to President Tyler's being asked to send the United States Army in there to preserve order. Later a case arose which went to the United States Supreme Court for decision as to whether or not a plaintiff, an officer under one government, had a right of action in trespass against officers who had been elected under the other constituted government, and the United States Supreme Court held that it did not make any difference, in effect, what kind of government the State itself chose, only provided, as the Constitution required, that it be a republican form of government. It was a political question for the President to decide under our statute, not for the courts. It lay within the power of the State itself originally to decide even what kind of government it would have, so long as it was a republican government. And that is true today. If the people of the State of New York, for example, want to revise their whole form of government they may call a constitutional convention, and adopt a new form of government only so long as it be a republican form of government.

Mr. President, that same sort of thing was involved, as I recall it, when some lady in Missouri named Minor brought suit in 1874 seeking to be permitted to vote. She claimed that she was a citizen of the United States. She was. The Supreme Court decided that even women were citizens of the United States; but that did not mean that they had a right to vote under the law of Missouri. The Supreme Court said:

The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. The Members of the House of Representatives are to be chosen by the people of the States, and the electors in each State must have the qualifications requisite for electors of the most numerous branch of the State legislature.

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power.

The Senator from Virginia [Mr. GLASS] is in the chair. I remember reading a few months ago an article by Jonathan

Daniels, who, I think, is now with the Office of Civilian Defense. He pointed out that under the law of the State of Virginia some 15 percent of the total population of the State is permitted to vote, while over the mountains in West Virginia, under West Virginia law, 76 percent of the voters had gone to the polls at the same election.

Standards of that kind are applied by the States. It has always been so. It has been so recognized by the Supreme Court of the United States. When the founders used the word "qualifications" and said that we were to be the judge of the qualifications of our own membership, in the absence of some statute which said that a man was ineligible, in the absence of some disqualification stated by the Constitution itself, or in the absence of a conviction for treason or felony anyone, no matter how infamous, was eligible. And I emphasize the word eligible to membership in this body.

There was a reason for all those things. The reason why persons were debarred by conviction of treason and felony, from being eligible to membership derived from the fact that under the law as it then stood both those offenses were punishable by death. They represented crimes against organized society, insofar as treason applied, and against organized mankind so far as felony was concerned. So it was, Mr. President, that conviction for either of those two offenses carried with it a conviction of outlawry. It was held that no person guilty of felony or of treason was capable of taking an oath.

That is why, when a man goes down the aisle and takes his oath at the Vice President's desk to qualify, he is being presented on the binding authority to which Washington, himself, adverted as the "knitting unit," upon which the whole structure of our society is based, namely, the sanctity of the oath. We find the oath as a fundamental factor running through every form of our activity in public life. We find it when a witness comes to the stand to take his oath in court. We find it when a grand jury is about to make a presentment or indictment against our citizens. We find it when a petit jury is sworn to make true deliverance of the prisoner at the bar. We find it with reference to the assumption of office by all officeholders, including Senators and Representatives when they come here.

So the question of qualifications was emphasized in the minds of the founders. There can be no cavil about it. They brought the test which they were applying without stint, and almost bodily, from Blackstone, the common law, and the law of Parliament in England, to the end that there should be retained in the States the matter of control over the qualifications of their own citizens, both to be electors and thereafter to be elected to the office of Senator of the United States. It might be worth recalling that the ninth and tenth amendments were insisted upon, particularly by the smaller States, which wished to be vouchsafed protection in their rights in that particular.

As a test of what the founders might have had in mind, I looked up Blackstone. In 1763, he wrote the following with respect to the qualifications of members of the House of Commons:

2. Qualification of members of House of Commons.—Next, as to the qualifications of persons to be elected members of the House of Commons. Some of these depend upon the law and custom of Parliament, declared by the House of Commons, others upon certain statutes. And from these it appears, 1. That they must not be aliens born, or minors. 2. That they must not be any of the 12 judges, because they sit in the lords' house, nor of the clergy, for they sit in the convocation, nor persons attainted of treason or felony, for they are unfit to sit anywhere. 3. That sheriffs of counties, and mayors and bailiffs of boroughs are not eligible in their respective jurisdictions, as being returning officers, but that sheriffs of one county are eligible to be knights of another. 4. That, in strictness, all members ought to have been inhabitants of the places for which they are chosen, but this having been long disregarded was at length entirely repealed by statute 14 George III, chapter 58. 5. That no persons concerned in the management of any duties or taxes created since 1692, except the commissioners of the treasury, nor any of the officers following, viz, commissioners of prizes, transports, sick and wounded, wine licenses, navy, and victualing; secretaries or receivers of prizes; comptrollers of the army accounts; agents for regiments; governors of plantations and their deputies; officers of Minorca or Gibraltar; officers of the excise and customs; clerks or deputies in the several offices of the treasury, exchequer, navy, victualing, admiralty, pay of the army or navy, secretaries of state, salt, stamps, appeals, wine licenses, hackney coaches, hawkers, and pedlers, nor any persons that hold any new offices under the Crown created since 1705, are capable of being elected or sitting as members. 6. That no person having a pension under the Crown during pleasure, or for any term of years, is capable of being elected or sitting.

We find the following express disqualification almost bodily in our own Constitution:

7. That if any member accepts an office under the Crown, except an officer in the army or navy accepting a new commission, his seat is void; but such member is capable of being reelected. 8. That all knights of the shire shall be actual knights—

And so forth.

But subject to these standing restrictions and disqualifications, every subject of the realm is eligible of common right, though there are instances wherein persons in particular circumstances have forfeited that common right, and have been declared ineligible for that Parliament by vote of the House of Commons, or forever by an act of the legislature. But it was an unconstitutional prohibition, which was grounded on an ordinance of the House of Lords.

Mr. President, to the end that there may be no repetition of that sort of thing in Congress the Constitution of the United States even inveighed against bills of attainder, which a few States previous to 1787 had already passed.

Mr. SHIPSTEAD. Mr. President, will the Senator yield?

Mr. DANAHER. I yield.

Mr. SHIPSTEAD. The qualifications or disqualifications enumerated by the British Parliament are legislative. The British Parliament does not work under a limited written constitution delegating power to Parliament, as we are limited by constitutional qualifications.

Mr. DANAHER. That is correct.

Mr. SHIPSTEAD. Within those limitations the Senate has full power; but, like any other function or duty which the Senate must perform, it must be performed under our Constitution, within constitutional limitations.

It would appear that in the case which is before the Senate today the limitations are enumerated.

Mr. DANAHER. I thank the Senator from Minnesota. The point I was seeking to make is that when the founders wrote our Constitution they knew that certain qualifications were stated for membership in Parliament, as well as in the several States. They knew that there were separate qualifications with reference to being elected as a member of the House of Commons, for obviously no peer could be a member of the House of Commons and, vice versa, no member of the House of Commons could be elected to the House of Lords.

Those things constituted a statement of qualifications; and when the founders used the term they knew full well that if Virginia chose to state her qualifications and Massachusetts chose to state hers, and we in Connecticut chose to prescribe ours, there would be left to the Senate the matter of testing whether or not a given aspirant in fact met the qualification stated. I have no question that this body could easily make inquiry as to whether or not a given individual meets the qualifications fixed in the State of Connecticut, for I have no doubt that this body can take judicial notice of what the law of Connecticut is in that particular; but that does not give us in the Senate any right whatever to add a statement of disqualification which is not known to the law, which is outside the Constitution, and which had never been prescribed by statute or otherwise.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. DANAHER. I yield.

Mr. LUCAS. The Senator is making a very able argument. I should like to draw attention to a hypothetical situation, as I did a few days ago when the Senator from Utah [Mr. MURDOCK] was presenting his argument. As I understand the position of the Senator from Connecticut, he takes the same view as does the Senator from Utah with respect to qualifications. Once a man meets the constitutional qualifications there is nothing for the Senate to do but to admit him. Am I correct in my understanding of the Senator's view?

Mr. DANAHER. I think I have tried to go further than the limited statement by the Senator from Illinois. I have stated that not only must he meet the disqualifying tests set forth in our Constitution, but he must also meet the qualifications stated and fixed by law in the State of Connecticut, the State of North Dakota, or any other State.

Mr. LUCAS. I am dealing now only with the qualifications laid down by the Constitution of the United States. My question is limited to those qualifications. There are five of them, which I understand now appear in what is known as

the Overton amendment. If I correctly understand the Senator's position, if an individual is elected by the people of Connecticut and he comes here and can meet the five qualifications laid down in the Constitution of the United States, plus any qualifications which the State of Connecticut lays down, it is absolutely mandatory that the Senate admit that man to the United States Senate.

Mr. DANAHER. Is the Senator stating what he understands?

Mr. LUCAS. No; I am asking if that is the Senator's position. I want to be clear as to what the Senator's position is in connection with this very important matter.

Mr. DANAHER. To what the Senator has stated, I add that if a person shall have been convicted of treason or felony, or of a crime which would be disqualifying in and of itself, then such person is inadmissible. I add so much to those qualifications which are requisite.

Mr. LUCAS. The Senator adds to those qualifications.

Mr. DANAHER. That is correct.

Mr. LUCAS. In other words, if an individual in Illinois were convicted of a crime in July, prior to the election in November, and in November, notwithstanding the fact that he has been convicted of a crime, the people should elect him to the United States Senate, and he were still out on bond, under those circumstances would the Senator deny him the right to come here and take the oath?

Mr. DANAHER. No; it does not follow that closely. I mean to say that we have the power to deny him a seat in the Senate, provided the type of offense of which he has been convicted is of such nature as to render him incapable of taking a valid oath. That is the reason for it.

Mr. LUCAS. Mr. President, will the Senator further yield?

Mr. DANAHER. Yes; I am glad to yield.

Mr. LUCAS. Of course, the Senator now is drawing a very fine line regarding what might in the opinion of some Senator be prohibitive of an individual becoming a member of the Senate, and what other Senators might say was not of sufficient importance to prevent him from taking the oath.

The point I thought the Senator was making in his argument, and what I thought he was attempting to do in quoting a good deal of history in connection with this important matter and also in view of what he said with respect to the commission of crime, was that he was laying down a fundamental principle to the end that when an individual has met the qualifications laid down by the State of Connecticut and has met the five qualifications laid down by the Constitution of the United States—qualifications now included in the Overton amendment—it is absolutely mandatory that we admit such person into the Senate. I thought that was the point the Senator was attempting to make. What I was leading up to was the following hypothetical question: If in any State an individual is elected United States Senator in the November election, and if immediately following his election he commits murder, and thereafter is allowed to be out on bond, and if while out on bond he comes to the United States Senate, bringing with him all the credentials which are necessary, under those circumstances is it the position of the Senator that under the Constitution we are bound to admit such a man to the Senate and to permit him to take the oath, and then can expel him afterward if he is convicted of murder?

Mr. DANAHER. That case presents no difficulty to me, Mr President. If the man had been convicted of murder, I should have voted that he stand aside. That is all there is to it.

Mr. LUCAS. I am not talking about a man who was convicted of murder.

Mr. DANAHER. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. DANAHER. How much time have I? I desire to be as generous as possible to my colleagues.

The PRESIDENT pro tempore. The Senator has 10 minutes remaining, on the amendment.

Mr. DANAHER. Mr. President, a further parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. DANAHER. Have I 30 minutes on the resolution itself?

The PRESIDENT pro tempore. Yes.

Mr. LUCAS. Mr. President, a parliamentary inquiry on that point.

The PRESIDENT pro tempore. The Senator will state it

Mr. LUCAS. I should like to have the clerk read the order previously entered relative to the limitation of time. Under the terms of the motion made by the distinguished Senator from Oregon, I do not believe that any Senator has over 30 minutes upon the resolution or any amendment thereto.

Mr. DANAHER. Mr. President, with reluctance I must say the Senator will not have the motion read in my time; I decline to yield further.

Mr. LUCAS. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. Does the Senator yield for that purpose?

Mr. DANAHER. I yield for the purpose of a parliamentary inquiry.

Mr. LUCAS. I should like to know the intent of the original motion as presented by the Senator from Oregon; and I say to the Senator from Connecticut that I shall be glad to have charged to me such time as may be necessary to discuss this parliamentary point, because it is important.

Mr. DANAHER. Yes; I understand that the Senator will have such time charged to him. I thank the Senator.

Mr. LUCAS. It was my understanding in the beginning, I may say to the Chair, when the able Senator from Oregon presented his request for unanimous consent, that, following its adoption, only 30 minutes could be consumed by any Member of the Senate in discussing the resolution or any motion or amendment relative thereto. I may be wrong; but it was my understanding that any Senator could take only 30 minutes, and that would be the end of his time, whether he might speak upon the original resolution or upon an amendment.

I call upon the Senator from Oregon to state if that is not his understanding.

The PRESIDENT pro tempore. The practice during the last several years has been that a Senator may conclude on an amendment and then take the same time on a motion.

Mr. DANAHER. That is correct.

Mr. McNARY. Mr. President, in reply to the inquiry made to me by the able Senator from Illinois—I hope the time I shall take will not be charged against me or against the Senator from Connecticut—let me say that yesterday, when the matter came up, we were acting quite hurriedly. I informed the Parliamentarian that I desired to have a unanimous-consent agreement prepared; and he prepared it. At that time I intended that 30 minutes should comprise the length of time allowed for the debate of any Senator, whether on motions, amendments, or resolutions. The unanimous-consent request was stated in the usual form; and I did not detect, when it was read, that it dealt with this point. All the fault is my own in not making my intention clear. In my judgment, the order as entered does permit 30 minutes on the motion and 30 minutes on the amendment. If there is any disposition to criticise or find fault, let the fault be charged to my account.

Mr. LUCAS. Mr. President, I regret to find myself in this position so far as the parliamentary situation is concerned. It was the definite understanding, as the able Senator from Oregon has said, that only 30 minutes would be allowed to any Member of the Senate to speak upon the original motion or upon any amendment or modification thereof. I shall not charge the Senator from Oregon with anything but the best intentions so far as the matter of limitation of debate is concerned; but I say that the Senator from Illinois is learning rather rapidly about parliamentary situations.

Mr. DANAHER. Mr. President, I take it that the last 10 minutes have not been charged against my time; is that correct?

The PRESIDENT pro tempore. The last 5 minutes have not been charged against the time of the Senator from Connecticut.

Mr. DANAHER. Apparently, I was proceeding, Mr. President, under the liberal construction rule. [Laughter.]

Let me say to the Senator from Illinois, with reference to his last comment previous to the interruptions, that I am not making this up; I am not giving the personal view of the Senator from Connecticut. I am giving the view which was established by the founders of the Constitution, by those collaborating with them, by those who construed it, by those who worked it out, by those who were on the Committee on Style, and others.

Mr. President, the other day I read to the Senate, as will appear at page 2752 of the RECORD, the view of Mr. Justice Swift, which was written in 1794. The two gentlemen, later United States Senators from my State who signed the Constitution and who assisted in its draftsmanship were among the first two Senators to come to Congress from Connecti-

cut. Mr. Justice Oliver Ellsworth was the third Chief Justice of the United States, and was one of the first United States Senators. He served in the Senate from 1789 to 1796. Mr. Justice Swift, from whom I quoted a few days ago, was later secretary to Oliver Ellsworth when he was Ambassador Plenipotentiary to France. Swift was his contemporary.

Mr. President, when Swift's System of Laws of the State of Connecticut was compiled, it was written and published under the patronage system then prevailing. I have in my hand a list of the subscribers to that work. Heading the list is the name of George Washington. President of the United States. His name is followed by the names of John Adams, Vice President of the United States; Timothy Pickering, Secretary of State; Oliver Wolcott, Secretary of the Treasury; Charles Lee, Attorney General; John Davis, Comptroller; Tench Coxe, Commissioner of Revenue; and others—men coming from every State.

Mr. President, the subscribers and patrons under whose guidance and genius this particular work was compiled were the very ones who had compiled and written the Constitution of the United States. So it is pertinent that we see what they thought, as expressed by Swift, with reference to the "qualifications" of Members of this body:

If we have recourse to the common law—

Swift wrote—

we shall find that no crimes render a person ineligible but high treason and felony. A House of Representatives, being only one branch of the Legislature, can have no constitutional right to expel a Member for any act done previously to his election unless he is disqualified by the common law or by statute—

and there is no such Federal statute, and no similar bar is stated in the Constitution. But the State of Connecticut, or any state, has the right to prescribe a limitation by statute or in its constitution so as to inhibit the election to the Senate of any person who has been convicted of any offense deemed by that state to be of disqualifying nature. Indeed, under the Constitution of Connecticut, not only must an elector "sustain a good moral character", but the General Assembly has power "to restore the privileges of an elector to those who may have forfeited the same by a conviction of crime". Note the reference to a "conviction". It is not urged that any such limitation exists against this applicant's right to his seat.

No such disqualification is urged against the Senator whose qualifications are now under consideration. There is no disqualification at common law being asserted against this particular Senator at this time. Mr. President, when he came to this body without having been convicted of the offenses which it is alleged he committed in North Dakota, and prior to his election to this body, it follows that in the constitutional sense he is possessed of the qualifications fixed by his State and by the Congress and within the purview of the common law.

That being the case, the jurisdiction over the only qualifications into which the committee could have inquired and as to which no irregularities were found, has already been exhausted; and there being no jurisdiction remaining in the committee to go further on the record in this case, it follows that we come back to the precedent stated by the Senator from Vermont [Mr. AUSTIN] this morning when he was reading from Hinds' Precedents. I invite the Senate's attention to page 10 of the report of the majority of the committee.

The report of the majority of the committee quotes Hinds' Precedents, at page 522, referring to the Brigham H. Roberts case:

1. Neither House of Congress has ever expelled a Member for acts unrelated to him as a Member or inconsistent with his public trust and duty as such.

2. Both Houses have many times refused to expel where the guilt of the Member was apparent; where the refusal to expel was put upon the ground that the House or the Senate, as the case might be, had no right to expel for an act unrelated to the Member as such, or because it was committed prior to his election.

Under the circumstances, Mr. President, when we come back to consider the authority of a given State, and when we look to the language of the court of last resort for the authority upon which to base our opinion, we may properly review the case of *Minor* v. *Happersett* (88 U. S. 162), where the Supreme Court pointed out:

The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guaranteed in any manner especially designated.

The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all, the people participated to some extent, through their representatives selected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is, therefore, to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution.

Mr. President, I do not intend to delay the Senate further. The case has been very ably argued, but I have sought to make a few points which it seemed to me had not been covered by anyone else and upon which I would wish it to appear that my vote in this matter would rest.

I feel it appropriate to point out an error, as I conceive it to be, in the argument submitted by the Senator from Vermont [Mr. AUSTIN] earlier in the day, when he talked about the Union that was being formed as the basis of the unity among the States. I believe that the view of the Senator from Vermont in that particular is not the view of the court of last resort in this country, and I think he will find in the case of United States against the Curtiss-Wright Corporation that Mr. Justice Sutherland expressly stated that the Constitution did no such thing as the Senator from Vermont would argue. Quite the contrary, when the Constitution expressly stated at the outset in the preamble that—

We, the people of the United States, in order to form a more perfect Union, * * * do ordain—

and so forth, the founders were doing no more than building upon a structure which already existed. A Union had existed by virtue of the Articles of Confederation, which had welded the sovereignty comprised of the people of the individual States into a confederation which, while a union, Mr. President, was not the union which later was perfected under our present Constitution, and which may properly be described, as it was, as the "more perfect Union." I think it will be found expressly to have been so decided in the Supreme Court decision to which I have referred.

It was essential to the decision that the Court should so decide, for it was construing the effect of the exercise of power by our Chief Magistrate in the exercise of the external sovereignty of our country.

It is pertinent also, I feel, Mr. President, in order that the majesty and the sovereignty of the State of Connecticut may become apparent in the RECORD, that I inform the Senate that when the Declaration of Independence was adopted in 1776 and news thereof reached our grand little Constitution State, the general court was in session, and this, Mr. President, is what was done by the general court:

The people of this State, being in the providence of God free and independent, have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and having from their ancestors derived a free and excellent constitution of government whereby the legislature depends on the free and annual election of the people, they have the best security for the preservation of their civil and religious rights and liberties. And forasmuch as the free fruition of such liberties and privileges as humanity, civility, and Christianity call for, as is due to every man in his place and proportion, without impeachment and infringement, hath ever been, and will be the tranquillity and stability of churches and Commonwealths; and the denial thereof, the disturbance, if not the ruin of both.

Be it enacted and declared by the Governor and council and house of representatives, in general court assembled, that the ancient form of civil government contained in the charter from Charles II, King of England, and adopted by the people of this State, shall be and remain the constitution of this State, under the sole authority of the people thereof, independent of any king or prince whatever. And that this Republic is, and shall forever be and remain, a free, sovereign, and independent State by the name of the State of Connecticut.

And be it further enacted and declared, That no man's life shall be taken away: no man's honour or good name shall be stained: no man's person shall be arrested, restrained, banished, dismembered, nor any ways punished: no man shall be deprived of his wife or children: no man's goods or estate shall be taken away from him, nor any ways indamaged under the colour of law, or countenance of authority; unless clearly warranted by the laws of this state.

That all the free inhabitants of this or any other of the United States of America, and foreigners in amity with this state, shall enjoy the same justice and law within this state, which is general for the state, in all cases proper for the cognizance of the civil authority and court of judicature within the same, and that without partiality or delay.

And that no man's person shall be restrained, or imprisoned, by any authority whatsoever, before the law hath sentenced him thereunto, if he can and will give sufficient security, bail, or mainprize for his appearance and good behaviour in the meantime, unless it be for capital crimes, contempt in open court, or in such cases wherein some express law doth allow of, or order the same.

Note that "no man's honour or good name" shall be stained except in accordance with law.

Thus, Connecticut preserved the ancient rights of its citizens, and they have ever been guaranteed to us. Thus, we in Connecticut feel singularly moved in the instant matter. We regard such protections as vital, moving items today as in 1776 when the General Court acted as I have shown. Our sacred privileges protected down through the centuries were old in 1789, and so, when Connecticut joined the Union, the "more perfect Union", it agreed, reserving its own rights, to be bound only in accordance with the supreme Law of the Land as set forth in the Constitution.

We knew our chosen Senator was not to be denied a seat in the Congress of the United States after our State had passed upon his qualifications, fixed by us, and had sent him here, always, of course, provided that he met the qualifications fixed by the Constitution itself. Consequently, Mr. President, if there be no barrier in law to the competency of a man taking an oath to perform his duties, to abide by the Constitution, and support and maintain it, then he will not be disqualified, and he is competent to a seat in this body as a matter of law.

That has nothing to do with the facts which extraneously were developed in this case; whatever those facts, or wherever they found the candidate in this case, he is left there; he is not exculpated; whatever conclusions some people seek to draw from the facts, such people are entitled to draw; but, under the Constitution, under our law, and as a matter of law, the candidate is entitled to the presumption of innocence until he shall have been convicted of the crimes as to which allegations have been made against him, and been convicted in accordance with law. It is not, Mr. President, in accordance with law when conviction must be said to rest upon what is done by some investigators in behalf of the committee which later makes a report to us based thereon, however sincere and earnest the members of the committee and their investigators may have been.

Under the circumstances, Mr. President, I feel that the qualifications of the candidate have affirmatively been ascertained insofar as the jurisdiction of this body applies; that the qualifications, in fact, have been ascertained to be in order and regular, and, on that ground, the applicant was entitled to take the oath, and he, therefore, did qualify as a Senator of the United States. Since, Mr. President, he cannot be expelled, nor has any Member of the Congress ever been expelled for alleged offenses committed prior to his election, particularly in the absence of conviction in a court of law, it follows, in my understanding of the case, that the candidate is entitled to his seat.

MANNER OF HEARING AND DETERMINING CASES UNDER EXPEDITING ACT OF FEBRUARY 11, 1903 — CONFERENCE REPORT

Mr. McCARRAN submitted the following conference report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 6005) to authorize cases under the Expediting Act of February 11, 1903, to be heard and determined by courts constituted in the same manner as courts constituted to hear and determine cases involving the constitutionality of Acts of Congress, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"Sec. 3 In any action in a district court wherein the action of three judges is required for the hearing and determination of an application for interlocutory injunction and for the final hearing by reason of the provisions of section 266 of the Judicial Code, the Act of October 22, 1913, chapter 32, or the Act of August 24, 1937, chapter 754, section 3 (being, respectively, sections 380, 47 and 380a of title 28 United States Code), or the Act of February 11, 1903 (32 Stat. 823; U. S. C., 1940 edition, title 15, section 28 and title 49, section 44), as amended by section 1 of this Act, any one of such three judges may perform all functions, conduct all proceedings, except the trial of such action, and enter all orders required or permitted by the Rules of Civil Procedure for the District Courts of the United States in effect at the time, provided such single judge shall not appoint, or order a reference to a master, or hear and determine any application for, or action of, an interlocutory injunction, or dismiss the action, or enter a summary or final judgment on all or any part of the action: *Provided, however*, That any action of a single judge hereby permitted shall be subject to review at any time prior to final hearing by the court as constituted for final hearing, on application of any party or by order of such court on its own motion."

And on page 2, lines 2 and 3, of the House engrossed bill, after "1903" strike out "(U. S. C., 1934 edition, title 49, sec. 44)" and insert "(32 Stat. 823; U. S. C., 1940 edition, title 15, sec. 28 and title 49, sec. 44)"; and the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill; and agree to the same.

PAT MCCARRAN,
TOM CONNALLY,
JOHN A. DANAHER,
Managers on the part of the Senate.

HATTON W. SUMNERS,
CHARLES F. MCLAUGHLIN,
CLARENCE E. HANCOCK,
Managers on the part of the House.

The report was agreed to.

CONSOLIDATION OF THE POLICE AND MUNICIPAL COURTS OF THE DISTRICT—CONFERENCE REPORT

Mr. McCARRAN submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5784) to consolidate the Police Court of the District of Columbia and the Municipal Court of the District of Columbia, to be known as "The Municipal Court for the District of Columbia," to create "The Municipal Court of Appeals for the District of Columbia," and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate to the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"That the Police Court of the District of Columbia and the Municipal Court of the District of Columbia, be, and they are hereby, consolidated into a single court to be known as "The Municipal Court for the District of Columbia".

"THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

"The court shall consist of ten judges appointed by the President with the advice and consent of the Senate, one of whom shall be designated by the President as chief judge.

"The terms of the judges shall be in accordance with the following schedule: The first two appointments shall be for a term of ten years each; the second two appointments shall be for a term of eight years each; and the remaining six appointments shall be for a term of six years each. The judges of the Police and Municipal Courts of the District of Columbia holding office on the effective date of this Act shall, however, serve as judges of The Municipal Court for the District of Columbia hereby created until the expiration of their respective commissions and until their successors are appointed and qualified.

"The Court shall adopt and have a seal, and shall be a court of record.

"SEC. 2. Subsequent appointments and reappointments to this court shall be for a term of ten years each. All judges shall continue in office until their successors shall be appointed and qualified Each judge shall be subject to removal only in the manner and for the same causes as are now or hereafter provided for the removal of Federal judges. The salary of the chief judge shall be $8,500 per annum and the salary of each associate judge shall be $8,000 per annum. Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States. No person other than a bona fide resident of the District of Columbia, and maintaining an actual place of abode therein for at least five years immediately prior to his appointment, or who shall have been a judge of one of the courts of the District of Columbia, shall be appointed a judge of The Municipal Court for the District of Columbia: *Provided, however*, That not more than two nonresident persons may be appointed and serve as judges of the said Municipal Court at any one time. Further, all appointees shall have been actively engaged in the practice of the law in the District of Columbia for a period of at least five years immediately prior to their appointment Service during the present emergency in the armed forces of the United States shall be included in the computation of the five-year requirements herein specified.

"SEC. 3. (a) The chief judge shall, from time to time and for such period or periods as he may determine, designate the judges to preside and attend at the various branches and sessions of the court. He shall have the power to determine the number and fix the time of the various sessions of the court, to arrange the business of the court, and to divide it and assign it among the judges. He shall also be charged with the general ad-

ministration and superintendence of the business of the court.

"(b) The chief judge shall give his attention to the discharge of the duties especially pertaining to his office, and to the performance of such additional judicial work as he may be able to perform.

"(c) It shall be the duty of the chief judge and the associate judges to meet together at least once in each month in each year, at such time as may be designated by the chief judge, for the consideration of such matters pertaining to the administration of justice in said court as may be brought before them.

"It shall be the duty of each associate judge to attend and serve at any branch or session of the court to which he is assigned. Each associate judge shall submit to the chief judge a monthly report in writing of the duties performed by him, which report shall specify the number of days attendance in court of such judge during said month, and the branch courts upon which he has attended, and the number of hours per day of such attendance, and such other data as may be required by the chief judge, and in such form as the chief judge shall require.

"The chief judge shall submit to the Attorney General of the United States and to the Commissioners of the District of Columbia a quarterly report in writing of the business of the court and of the duties performed by each of the judges of the court during the preceding three months. A copy of said report shall be filed in the office of the clerk of the court and shall be available and subject to public inspection during business hours.

"In the event of the absence, disability, or disqualification of the chief judge, his duties shall devolve upon and be performed by the other judges in the order of seniority of their commissions.

"Each judge shall be entitled to vacation, which shall not exceed thirty-six court days in any one calendar year, and which shall be taken at such times as may be determined by the chief judge.

"The court shall have authority to appoint and remove a clerk of the court, whose salary shall be fixed by the court in accordance with the Classification Act of 1923, as amended, and the clerk so appointed shall have and exercise the powers and authority heretofore had or exercised by the clerk of the Police Court of the District of Columbia and the clerk of the Municipal Court of the District of Columbia.

"The clerk of the court shall have authority, subject to the approval of the chief judge, to appoint and remove such deputy clerks and such other employees as he may deem necessary, and to have their compensation fixed by the chief judge in accordance with the Classification Act of 1923, as amended, and shall have supervision and direction over them, except clerks serving the respective judges, who shall be appointed and removed from office by the respective judges, their compensation to be fixed by the respective judges in accordance with the Classification Act of 1923, as amended.

"The court shall have authority to appoint and remove a probation officer of the court, whose salary shall be fixed by the court in accordance with the Classification Act of 1923, as amended, and the probation officer so appointed shall have and exercise the powers and authority heretofore had or exercised by the probation officer of the Police Court of the District of Columbia.

"The probation officer of the court, subject to the approval of the chief judge, shall have authority to appoint and remove such assistant probation officers and such other employees of the probation office as he may deem necessary, and to have their compensation fixed by the chief judge in accordance with the Classification Act of 1923, as amended, and shall have supervision and direction over them.

"All officials and employees of the Police Court of the District of Columbia and of the Municipal Court of the District of Columbia holding office on the effective date of this Act shall continue in office unless and until they are removed therefrom; and all appropriations for the said Police Court or the said Municipal Court shall be available for the payment of the salaries and expenses of The Municipal Court for the District of Columbia as hereby established.

"SEC. 4. (a) The Municipal Court for the District of Columbia, as established by this Act, shall consist of a criminal and a civil branch. The court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Police Court of the District of Columbia or by the Municipal Court of the District of Columbia or the judges thereof on the effective date of this Act, and, in addition, the said court shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000 and, in addition, shall also have exclusive jurisdiction of such actions against executors, administrators, and other fiduciaries: *Provided, however,* That the District Court of the United States for the District of Columbia shall have jurisdiction of counterclaims and closs-claims interposed in actions over which it has jurisdiction. The court shall also have jurisdiction over all cases properly pending in the Municipal Court of the District of Columbia or the Police Court of the District of Columbia on the effective date of this Act.

"(b) Service of process in the criminal division of the court shall be had as provided under existing law for the Police Court of the District of Columbia; service of process in the civil division of the court shall be had as provided under existing law for the Municipal Court of the District of Columbia, or in such other manner as may be prescribed by rules of court.

"(c) All judgments entered by The Municipal Court for the District of Columbia on or after the effective date of this Act shall remain in force for six years and no longer, unless the same be docketed in the office of the clerk of the District Court of the United States for the District of Columbia. Upon payment of a fee of 50 cents, the clerk of The Municipal Court for the District of Columbia shall prepare a copy of any judgment of the said court, whether heretofore rendered and in force and effective on the effective date of this Act, or hereafter rendered, and the same, upon being docketed with the clerk of said District Court shall have the same force and effect for all purposes as if it had been a judgment of said District Court. For the docketing of the same, the clerk of said District Court shall charge a fee of 50 cents.

"SEC. 5. (a) If, in any action, other than an action for equitable relief, pending on the effective date of this Act or thereafter commenced in the District Court of the United States for the District of Columbia, it shall appear to the satisfaction of the court at any pretrial hearing thereof that the action will not justify a judgment in excess of $1,000, the court may certify such action to The Municipal Court for the District of Columbia for trial. The pleadings in such action, together with a copy of the docket entries and of any orders theretofore entered therein, shall be sent to the clerk of the said Municipal Court, together with the deposit for costs, and the case shall be called for trial in that court promptly thereafter; and shall thereafter be treated as though it had been filed originally in the said Municipal Court, except that the jurisdiction of that court shall extend to the amount claimed in such action, even though it exceed the sum of $3,000.

"(b) The Municipal Court for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, the forms of process, writs, pleadings and motions, and practice and procedure in such court, to provide for the efficient administration of justice, and the same shall conform as nearly as may be practicable to the forms, practice, and procedure now obtaining under the Federal Rules of Civil Procedure. Said rules shall not abridge, enlarge, or modify the substantive rights of any litigant. After their effective date all laws in conflict therewith shall be of no further force or effect: *Provided, however,* That nothing in this section shall be construed to require any change in the existing rules, procedure, or practice now in effect in the small claims and conciliation branch of the presently constituted Municipal Court of the District of Columbia; nor shall this Act or any section thereof in any way repeal or modify the provisions of the Act of March 5, 1938 (52 Stat. 103, ch. 43), establishing said small claims and conciliation branch.

"(c) The Municipal Court for the District of Columbia shall have the power to compel the attendance of witnesses from any part of the District of Columbia by attachment, and any judge thereof shall have the power to punish for disobedience of any order, or contempt committed in presence of the Court by a fine not exceeding $50 or imprisonment not exceeding thirty days.

"THE MUNICIPAL COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

"SEC. 6. There is hereby established and created an intermediate appellate court for the District of Columbia to be known as "The Municipal Court of Appeals for the District of Columbia," for the hearing of appeals from judgments and orders of The Municipal Court for the District of Columbia as established by this Act, and of the Juvenile Court of the District of Columbia, as hereinafter provided.

"The court shall adopt and have a seal, and shall be a court of record.

"The said court shall consist of three judges appointed by the President with the advice and consent of the Senate, two of whom shall constitute a quorum, and one of whom shall be designated by the President as chief judge.

"No person other than a bona fide resident of the District of Columbia and maintaining an actual place of abode therein for at least five years immediately prior to his appointment, or who shall have been a judge of one of the courts of the District of Columbia, shall be appointed a judge of The Municipal Court of Appeals for the District of Columbia. Further, all appointees shall have been actively engaged in the practice of the law in the District of Columbia for a period of at least five years immediately prior to their appointment. Service during the present emergency in the armed forces of the United States shall be included in the computation of the five-year requirements herein specified.

"The chief judge shall be appointed for a term of ten years and the associate judges shall be appointed initially for terms of eight and six years each.

"Subsequent appointments and reappointments to this court shall be for a term of ten years each. All judges shall continue in office until their successors shall be appointed and qualified. Each judge shall be subject to removal only in the manner and for the same causes as are now or hereafter provided for the removal of Federal judges. The salary of the chief judge shall be $9,500 per annum and that of each associate judge shall be $9,000 per annum. Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States. In the event of the absence, disability, or disqualification of any judge of The Municipal Court of Appeals for the District of Columbia, or in the event of a vacancy in the office of any such judge,

the chief judge of said court may designate and assign any judge of The Municipal Court for the District of Columbia to act temporarily as a judge of said court. Likewise the chief judge, whenever he finds it in the public interest to do so, may designate and assign any judge of said Municipal Court of Appeals to act temporarily as a judge of The Municipal Court for the District of Columbia. In the event of the absence, disability, or disqualification of the chief judge of said court, his powers shall be exercised by that judge of said court next in seniority according to the date of commission.

"The said court shall appoint and remove a clerk who shall exercise the same powers and perform the same duties in regard to all matters within the jurisdiction of the court as are exercised and performed by the clerk of the United States Court of Appeals for the District of Columbia, so far as the same may be applicable, and his compensation shall be fixed by the court in accordance with the Classification Act of 1923, as amended. The clerk of the court, subject to the approval of the chief judge, shall have authority to appoint and remove such deputy clerks and such other employees as he may deem necessary, and to have their compensation fixed by the chief judge in accordance with the Classification Act of 1923, as amended, and shall have supervision and direction over them, except clerks serving the respective judges, who shall be appointed and removed from office by the respective judges, their compensation to be fixed by the respective judges in accordance with the Classification Act of 1923, as amended.

"SEC. 7. (a) Any party aggrieved by any final order or judgment of The Municipal Court for the District of Columbia, as created by this Act, or of the Juvenile Court of the District of Columbia, may appeal therefrom as of right to The Municipal Court of Appeals for the District of Columbia. Appeals may also be taken to said court as of right from all interlocutory orders of The Municipal Court for the District of Columbia whereby the possession of property is changed or affected such as orders dissolving writs of attachment and the like: *Provided, however,* That reviews of judgments of the small claims and conciliation branch of the Municipal Court of the District of Columbia, and reviews of judgments in the criminal branch of the court where the penalty imposed is less than $50, shall be by application for the allowance of an appeal, filed in said Municipal Court of Appeals. Said application shall be on a standard form, in simple language, prescribed by The Municipal Court for the District of Columbia. When the appealing party is not represented by counsel, it shall be the duty of the clerk to prepare the application in his behalf. The application for appeal shall be filed in The Municipal Court of Appeals for the District of Columbia within three days from the date of judgment. It shall be promptly presented by the clerk to the chief judge and to each of the associate judges for their consideration. If they or any one of them are of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal, and given a preferred status on the calendar, and heard in the same manner as other appeals in said court. If the chief judge and both associate judges shall be of the opinion that an appeal should be denied, such denial shall stand as an affirmance of the judgment of the trial court, from which there shall be no further appeal

"After the effective date of this Act, no writs of error or appeals, except in respect of judgments theretofore rendered, shall be granted by the United States Court of Appeals for the District of Columbia to the said Municipal Court or to the said Juvenile Court.

"(b) The Municipal Court of Appeals for the District of Columbia shall have the power to prescribe by rules what parts of the proceedings in the court below shall constitute the record on appeal, and to require that the original papers be sent to it instead of copies thereof, and generally to regulate all matters relating to appeals, whether in the court below or in said The Municipal Court of Appeals for the District of Columbia.

"(c) The Municipal Court of Appeals for the District of Columbia shall not require the record or briefs on appeal to be printed, and if they are printed, the cost of printing shall not be taxed as costs in the case. Said court shall review the record on appeal and shall affirm, reverse, or modify the order or judgment in accordance with law. If the issues of fact shall have been tried by jury, The Municipal Court of Appeals for the District of Columbia shall review the case only as to matters of law. If the case shall have been tried without a jury, The Municipal Court of Appeals for the District of Columbia shall have the power to review both as to the facts and the law, but in such case the judgment of the trial court shall not be set aside except for errors of law or unless it appears that the judgment is plainly wrong or without evidence to support it.

"(d) This section shall not apply to any judgments rendered prior to the effective date of this Act.

"SEC. 8. Any party aggrieved by any judgment of The Municipal Court of Appeals for the District of Columbia may seek a review thereof by the United States Court of Appeals for the District of Columbia by petition for the allowance of an appeal. The petition shall be in writing and shall be filed with the clerk of said United States Court of Appeals within ten days after the entry of such judgment, the contents of the petition to conform to the requirements which said United States Court of Appeals may by rule prescribe. Said Court of Appeals may prescribe rules governing the practice and procedure on such applications, the preparation of and the time for filing the transcript of the record in such cases, and generally to regulate all matters relating to appeals in such cases. If said Court of Appeals shall allow an appeal, the court shall review the record on appeal and shall affirm, reverse, or modify the order or judgment in accordance with law.

"SEC. 9. (a) The Municipal Court of Appeals for the District of Columbia shall have the power and is hereby directed to prescribe, by rules, the forms of process, writs, pleadings and motions, and practice and procedure in such court, to provide for the efficient administration of justice, and the same shall conform as nearly as may be practicable to the forms, practice, and procedure now obtaining under the Federal Rules of Civil Procedure. Said rules shall not abridge, enlarge, or modify the substantive rights of any litigant. After their effective date all laws in conflict therewith shall be of no further force or effect.

"Service of process shall be made by the United States Marshal for the District of Columbia.

"(b) The Municipal Court of Appeals for the District of Columbia, or any judge thereof, shall have the power to punish for disobedience of any order or contempt committed in the presence of the Court by a fine not exceeding $50, or imprisonment not exceeding thirty days.

"SEC. 10. The Municipal Court for the District of Columbia, and The Municipal Court of Appeals for the District of Columbia as established by this Act, shall have full power and authority to censure, suspend, or expel from practice, at their respective bars, any attorney for any crime involving moral turpitude, or professional misconduct, or any conduct prejudicial to the administration of justice. Before any such attorney is censured, suspended, or expelled, written charges under oath against him must be presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the attorney personally by the marshal or such other person as the court may designate, or in case it is established to the satisfaction of the court that personal service cannot be had, a certified copy of such charges and order shall be served upon him by mail, publication, or otherwise, as the court may direct. At any time after the filing of said written charges, the court shall have the power, pending the trial thereof, to suspend from practice at its bar the person charged.

"SEC. 11. (a) Any judge of The Municipal Court for the District of Columbia, any judge of The Municipal Court of Appeals for the District of Columbia, as established by this Act, or any judge of the Juvenile Court of the District of Columbia, may hereafter retire after having served as a judge of such court for a period or periods aggregating twenty years or more, whether continuously or not. Any judge who so retires shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the date of such retirement as the total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge. In no event shall the sum received by any such judge hereunder be in excess of the salary of such judge at the date of such retirement. In computing the years of service under this section, service in either the Police Court of the District of Columbia or the Municipal Court of the District of Columbia, or the Juvenile Court of the District of Columbia, as heretofore constituted, shall be included whether or not such service be continuous. The terms "retire" and "retirement" as used in this section shall mean and include retirement, resignation, or failure of reappointment upon the expiration of the term of office of an incumbent.

"(b) Any judge receiving retirement salary under the provisions of this Act may be called upon by the chief judge of The Municipal Court for the District of Columbia or the chief judge of The Municipal Court of Appeals for the District of Columbia to perform such judicial duties as may be requested of him in either of said courts, or in the Juvenile Court of the District of Columbia, but in any event no such retired judge shall be required to render such service for more than ninety days in any calendar year after such retirement. In case of illness or disability precluding the rendering of such service such retired judge shall be fully relieved of any such duty during such illness or disability.

"SEC. 12. If any provision of this Act, or the application thereof to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby; and if any provision hereof becomes inoperative, either by reason of failure of appropriations or otherwise, it shall not affect the legality or operative effect of any or all of the remaining features and provisions hereof.

"SEC. 13. The appropriations in the 1942 District of Columbia Appropriation Act, approved July 1, 1941, for the Police Court of the District of Columbia and the Municipal Court of the District of Columbia, are hereby continued available for the purposes specified therein, and for the expenditures authorized by this Act. And there is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, such funds as may be

necessary to carry out the provisions of this Act.

"SEC. 14. The provisions of this Act authorizing the appointment and salaries of the judges of The Municipal Court of Appeals for the District of Columbia and the clerk, deputy clerks, and other employees of said court, shall take effect one month after approval of this Act. The other provisions of this Act shall take effect three months after the date of its approval.

"The expression 'effective date of this Act,' as used in this Act, means three months after the approval of this Act."

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

PAT MCCARRAN,
JOHN H. OVERTON,
HAROLD H. BURTON,
Managers on the part of the Senate.

DAN R. MCGEHEE,
OREN HARRIS,
Managers on the part of the House.

The report was agreed to.

NINE-POINT PROGRAM FOR STREAMLINING ALL-OUT WAR

Mr. PEPPER. Mr. President, yesterday the members of the Foreign Relations Committee, I think without exception, were moved by a report which was made to the committee by the Honorable Francis B. Sayre, telling of conditions with which he has personally been confronted in Manila, Corregidor, Bataan, and in the regions where the battle of the Pacific rages.

I come from a State which has already given to this war its first hero and the first recipient of the Congressional Medal, Capt. Colin P. Kelly and Lieutenant Nininger.

I read in the afternoon paper the statement by Prime Minister Churchill that the battle of the Atlantic is temporarily worse. I see in another afternoon paper a heartening address to the Australian people by General MacArthur, the headline of which in the Times-Herald is "MacArthur declares he'll win or die."

In the course of his remarks this indomitable soldier and crusader of liberty and freedom used these words:

> My faith in our ultimate victory is invincible. I bring to you tonight the unmistakable spirit of free men as opposed to perpetual slavery.
>
> We fight for the things that are right and condemn the things that are wrong. Under this banner the free men of the world are united to death. There will be no compromise. We shall win, or we shall die.

MacArthur pledged to Australia the full backing "of the mighty power of my country and all the blood of my countrymen."

Mr. President, I think it is only fair to examine whether or not in the Congress and in the country there is assurance that that heroic promise made by General MacArthur can be kept and faithfully performed. There is the greater doubt when from day to day the people of this country are confronted with such press releases as appeared, for example, in the Washington Post this morning, where it is said that "Two caulkers claim $160 each for 8 hours' work," as reported by the Associated Press, according to testimony received by the Naval Affairs Committee of the House.

I say especially is there some doubt about the sentiment in the country when one reads such evidence as was presented to the Committee on Naval Affairs yesterday, as reported in the Evening Star yesterday, that "sample companies with Navy contracts had increased tremendously in the period between 1934–41, the increases ranging from 22 to 1,331 percent."

Especially also is there doubt about such a sentiment for total mobilization in the country when we read reports such as that appearing in the August issue of Fortune magazine, which indicates the tie-up between certain industrial enterprises in the United States and state-controlled enterprises in Germany. I read now from a report made by Mr. Thurman Arnold, in which he quotes the article in Fortune magazine, as follows:

> Nazi interest in trade restraint is to hold back production outside Germany. Inside Germany they have optimum production, optimum expansion for the state. Nothing interests them less than maintaining "orderly markets." But by cleverly playing upon the profit motive (which is suppressed inside Germany) they have gulled businessmen in the democracies into limiting production of the very articles that the democracies were to need most urgently in their own defense. In this way Germany induced Europe's democracies to "stabilize" aluminum production—in their own self-interest—while German production shot forward at top speed. The consequences of this have since become all too plain.

Mr. Arnold adds:

> It is interesting to note that every single instance of the German influence which was cited in the article, to wit: Military optical instruments, tungsten carbide, aluminum, magnesium, beryllium, chemicals, and drugs, was uncovered by an antitrust investigation or prosecution.

The investigation also disclosed that there was an agreement between a German munitions company and the Remington Arms Co. as late as January 1941, whereby it was definitely agreed by this American company that they would not sell rifles or ammunition covered by the agreement to any country constituting a part of the British Empire.

It has also been disclosed by the antitrust investigation of the Department of Justice that in respect to pharmaceuticals there was a similar agreement—that is to say, an understanding—between the American company using German patents and the parent German companies, which are State owned, as to the division of the world market, the American company reserving to itself the right to charge any price it chose in the American market, and the German company being given a free hand in the other markets of the world.

It has also been made to appear by this investigation as to how the aluminum production increased in Germany from 1933 to 1938, and, indeed, to 1941, as compared with aluminum production in the so-called democratic countries, including our own. For instance, the comparison in production between France and Germany is shown by the following figures. In 1933, France produced 14,300 tons of aluminum, and in the same year Germany produced 18,900 tons.

In 1934, France produced 15,000 tons of aluminum in round figures, and Germany 37,000 tons.

In 1935, France produced 22,000 tons, and Germany 70,000 tons.

In 1936, France produced 28,000 tons, and Germany 97,000 tons.

In 1937, France produced 34,000 tons, and Germany 127,000 tons.

In 1938, France produced 40,000 tons, and Germany 175,000 tons.

In 1933 German production, as I have stated, amounted to 18,000 tons, while United States production amounted to 38,000 tons.

In 1934 German production amounted to 37,000 tons, the United States production to 33,000 tons.

In 1935 German production amounted to 70,000 tons, the United States production to 54,000 tons.

In 1936 German production amounted to 97,000 tons, the United States production to 102,000 tons.

In 1937 German production amounted to 127,000 tons, the United States production to 132,000 tons.

In 1938 German production amounted to 175,000 tons, the United States production to 130,000 tons.

The estimate by the Bureau of Mines is that in 1941 Germany produced more aluminum than the combined United Nations produced, that is to say, than all the Allies produced.

So, for the price of the American market, we helped Germany build the very planes which have been the messengers of death to our Allies and ourselves.

The investigation has disclosed another very interesting situation, involving the New Jersey Zinc Co., which is the owner of one of the two methods by which high-grade zinc is produced in the United States. The statement which I have before me, which comes from an authentic source, says:

> In the face of this situation, the New Jersey Zinc Co. has persistently refused to grant licenses for the use of its patented processes—the superiority of which seems to be generally recognized. New Jersey's refusal to license its patents is in the face of urgent pleas by such corporations as United States Steel, American Smelting & Refining, Anaconda Copper Co., and National Lead that New Jersey "let down the bars" if only, as one executive puts it, "out of a sense of patriotic duty."
>
> In this regard, it should be noted that New Jersey has granted only two licenses for the use of its process, and each of these has carried restrictions as regards the quantity and quality to be produced. One, to the American Smelting & Refining Co., limited this company to the right to make only 5,000 tons per year. As a concession to the emergency they were permitted to make 7,000 tons in 1941. The other, to the Grasselli Division of du Pont, limited the quality. Meanwhile, through a sale of its patent rights to European interests, both German and Italian producers are utilizing the very processes which are generally denied to American producers.

Mr. President, there is another instance of note, that of a case where one German company refused to allow the use of its patent process by an American company unless the American company would agree that it would not give advertising in the United States to any newspaper which was inimical to Germany in its views and editorial policy. Believe it or not, American companies

have, for profit purposes, entered into such combines as that.

So, Mr. President, I say it is not striking that the people of the United States today are very deeply stirred by the failure of their Congress to make adequate provision for the defense of their country and the total mobilization of their country's effort.

We all recall that since General MacArthur has been in Australia, the Australian Government, which is a labor government, has taken unto itself complete control and power over the people and the property of that great land, determined to live or die free men, and to resist the Japanese aggression, which is daily creeping with sinister cruelty closer and closer to their sacred homes.

I think it is therefore time for the Congress to reexamine what it has done, what it is now considering, and what it proposes to do, to see whether or not the country can feel that satisfaction which it should feel, that the Congress is making the utmost preparation to meet the greatest attack which has ever been hurled against this land in all its long history.

I regret very much to have to say, as a Member of this distinguished body, that, in my opinion, the American Congress stands lower in the estimation of the American people today, assuredly, than it has stood within my own memory, certainly within the brief period of my tenure here of something over 5 years.

In every part of this country men and women, not just those who are inimical to industry, not just those who are hostile to labor, not those who ordinarily lack confidence in public officials, but good men and good women, conscientious boys and sincere girls, are asking the question: "Is the American Congress fully alert to the danger which confronts our country today? Is the American Congress courageous enough to meet the menace, with the only methods by which it may be adequately resisted and at last thrown back?" I wonder whether or not our record of performance has given them assurance that we do possess the courage which they would like to see us indicate.

For that reason, Mr. President, I am venturing to propose a nine-point program to the Congress, to be by the Congress considered, and I hope approved, in furtherance of the great, Herculean leadership, which is being given to this country and to our kind of world by our incomparable President, Franklin D. Roosevelt. I speak, Mr. President, only in aid of the mighty effort which he is exerting better to prepare and defend America, and to strike down the monsters of tyranny everywhere in the world.

First, I propose that Congress begin with self-examination; that the Congress streamline itself by the creation of a special joint war committee to correlate all congressional activities more closely with one another and with the President and his executive agents, so that the Congress may constantly keep the over-all war picture before it and most effectively provide for and contribute to the winning of the war.

Mr. O'MAHONEY. Mr. President——

The PRESIDING OFFICER (Mr. VAN NUYS in the chair). Does the Senator from Florida yield to the Senator from Wyoming?

Mr. PEPPER. Mr. President, I hope the Senator will allow me to continue until I shall have completed my statement, in view of the consent agreement which limits the time of each speaker. I am not sure that I will have time enough to say what I contemplate saying. When I shall have finished I shall gladly yield, and I hope there will be time enough to answer any questions the able Senator from Wyoming may ask.

Mr. O'MAHONEY. Mr. President, I shall accommodate myself to the Senator's request.

Mr. PEPPER. I regret the necessity of resisting at this time the inquiry of my friend the Senator from Wyoming, because I should normally be glad to do anything he asks me to do.

Mr. O'MAHONEY. But the charges which the Senator makes against the Congress of the United States are so serious that I think they warrant a little discussion.

Mr. PEPPER. As soon as I shall have completed my remarks I shall gladly yield to any inquiry the Senator may make.

Mr. President, this first point is addressed in the first place to the inherent lost motion there is in the ordinary mechanism of the Congress, and I say this, as I say everything else which I propose to say in these remarks, with kindliness, certainly with great admiration and respect for my colleagues, with the consciousness that I am the least among them. What I shall say is intended purely in the spirit of offering suggestions which I hope might be of some help in the total mobilization of our country, and Congress' effort in that direction.

Mr. President, I started to advert to the fact, as is known to all of us, that in the last few days a great many congressional committees have been carrying on investigations. That means that day after day, and sometimes several times a day, men like Mr. Donald Nelson, and the leading figures in the administrative set-up of the defense program, have to trek up here on the Hill to appear before the various committees of Congress, each of which is acting certainly within its jurisdiction, and, of course, with justification, but nevertheless in a way that burdens those men and restricts the use of their time to their own duties, in which all of us, of course, are vitally interested.

Moreover our committee system, each committee looking through a single glass, as it were, or not more than through one window, does not give any committee, generally speaking, the opportunity to view the over-all defense picture to see whether there is anything that, out of a responsible source, might be suggested which could contribute something to the winning of the war. I thought therefore that if the leadership of the Congress, both in the House and in the Senate, with the cooperation of the Speaker, and the President of the Senate, were to set up a joint committee composed of Members drawn from the Senate and House, which would be a sort of over-all war committee—and I am certainly not proposing myself for membership, Mr. President, and I should have nothing to do with appointing the personnel of that committee—I believe that such an over-all war committee, charged with no specific investigation, but with the general correlation of the Congress' activities on the subject of national defense, for general cooperation with the President and administrative agents, could very materially expedite the defense program, and very materially increase its tempo and effectiveness.

My second suggestion, Mr. President, is universal manpower mobilization, so that every citizen, every man and woman, may be best trained and placed to win the war in the shortest possible time and with the least loss of lives and money.

Mr. President, I think the time has come for us to decide—I am sure we shall have to decide it sooner or later—whether we mean total all-out mobilization of the strength and the resources of this country, or whether we do not; whether we are going to impose the burden of this war upon a few of our people, and let the rest be exempt; whether we are going to pick out a peculiar class and thrust the responsibility directly upon them, or whether, in the name of America's liberty, in furtherance of America's freedom, we as America's Congress are going to have the courage to challenge the whole American citizenry, men and women, boys and girls, to take their assigned places where they can serve best in the defense of their country, and gladly and enthusiastically perform their several duties.

I realize that that will apply to all ranks and classes of our people, and it is so intended. I mean by that to give the Government the power to assign labor where it might be necessary for labor to be assigned to carry on the defense program, for unless labor shall make it possible for democracy to survive in the earth, there never will be a decent life possible for any man who earns his living by the sweat of his brow.

Mr. President, that also contemplates the power in the Government to draft the brains, the management of the country. I see no reason why a man cannot be called from his factory to perform the functions of a governmental official necessary to his Nation's defense, and why he is not as amenable to the discipline of the defense effort as any man. By that statement I exempt no individual, I exempt no class, I exempt no sex. I say that the Government, by provisions which it should fairly and equitably and intelligently make, should have at its disposal the manpower and the womanpower of this whole great land.

Mr. President, I believe that there is not a Senator who has not seen enough of the sentiment of the country in the

last few weeks to know that what the country is clamoring for is for Congress to take a more courageous and stern policy, and a more definite and positive leadership.

Mr. President, I am afraid the people have gotten the impression that we are afraid to lead the country the way they in their hearts and in our hearts we know it ought to be led in the face of this great crisis which is growing daily more terrible upon our very horizon. I believe there is not even the prospect, Mr. President, that a single portion of our people who might so be called would fail to respond in the same patriotic way that the men who have been called in the draft have responded. There were some people who said that if we drafted men in this country before war has been declared there would be resistance. To the eternal glory of this country let it be said that there was hardly a discoverable case in all the great land, from coast to coast, and from our northern boundary to the Gulf of Mexico, and there will not be resistence, Mr. President, from the laboring men, or from factory managers, or from professional men, or from women, if they are fairly, equitably, and intelligently called.

Mr. President, I say the people of the country are begging for a chance to do something which they feel will help and will have a distinct and vital part in the defense program.

The third point is to abolish all legal restrictions of hours of labor during the war.

Mr. President, I am not saying that it is so bad to have a 40-hour week. I am not saying that perhaps it is not working out fairly well in experience, or that the average actually is not in excess of 40 hours per week; that it does not in some cases approximate even 50 hours. But what I am saying is that it is wrong in principle, in patriotism, in this time of crisis to have a law upon the books which limits the labor of any man in the defense of his country. It gives the wrong impression when a man gets time and a half pay. It gives the impression that he is doing something outside the scope of his duty when he works longer than 40 hours.

Mr. President, no citizen can satisfy his obligation to his land in a time of crisis by working any limited number of hours less than the total of his strength. This may be another case comparable to the one we had presented to us here a bit ago with respect to our own so-called pensions.

As a matter of fact, examined logically, intelligently, and dispassionately, the proposal was not anything like as bad as the newspapers of the country and our enemies tried to pretend it was. In my own case, being 41 years of age, I should have to pay 5 percent of my annual salary, or a total of $10,500, over a period of 21 years, before I ever become eligible for a penny of that retirement fund.

The country, however, never understood that we contributed anything toward the fund. The country thought it was a grab by the American Congress out of the public purse. In this time of crucial challenge to our national security, when our total effort, including our morale, must be mobilized, almost without objection the membership of this body reversed their position and repealed that law, to the obvious satisfaction of the American people. By doing so, by making frank confession of error, I believe, increased the respect in which Congress is held by the American people.

Mr. President, I say, therefore, that as it actually has worked out, the 40-hour-week work limit may not be impeding the program very materially, but if it is impeding it at all, even by one-half of 1 percent, or one-quarter of 1 percent; if it, by a single iota, holds up and handicaps the progress of that program, it is wrong, and it is contrary to the best interests of the people of America.

Mr. President, this has not been an easy decision for me to arrive at. I have been a friend of labor, and I am a friend of labor. I challenge any Senator to show a record of greater fidelity to the cause of labor than my own, as it appears from the records of the Congress. But, Mr. President, the people of this country are deeply stirred. In the past month I have been from the Atlantic seaboard to the Pacific. I have been from the northern boundary of this Nation to the southern boundary. I have been in my State and in the States of other Senators. The people are disturbed about this thing as I have never before seen them disturbed.

The feeling is not confined to those who are organized enemies of labor. It is not alone in the hearts of the labor baiters. It is not expressed exclusively by those who want to destroy labor unions at all events. It does not come alone from those who take advantage of the national crisis to wrap the flag around themselves and destroy humane efforts wherever they have been made to appear. On the contrary, the major part of these expressions come from the bleeding hearts of the men and women of this country.

I am not one of those who embrace the fallacy that only the sons of the rich are in the Army, and therefore that labor, by not doing all that could be done for the defense effort, is not giving all the support it could give to the sons of the rich who happen to be in our armed services.

On the contrary, Mr. President, I well know that 42 percent of the families of the United States have an annual income of less than $1,000; that 65 percent of the families of this country yearly earn a gross income of less than $1,500; that 87 percent each year enjoy less than $2,500; that 97 percent annually derive less than $5,000; and that only 1 percent of America's families receive $10,000 a year or more. So I know that most of the boys in the Army and Navy and in the air come from humble American homes. I know also that the fathers behind those boys are anxious—yea, willing and begging—for an opportunity to do their very best to make those boys, wherever they are, comfortable and well equipped as they approach the crucial struggle that may end their mortal lives. So I know the fathers of America who labor yield to none in their patriotism and purpose to help America's sons—their sons—win this war.

But, Mr. President, upon reflection, I believe all will agree that we should remove from the statute books of this Nation any legal impediment to the number of hours a week or a day which a man may work. I shall subsequently refer to a method whereby a reasonable restraint may be imposed and reasonable protection given to labor. None of us is foolish enough to think that we could gain in production by making a man work past the point of diminishing economic return, or more than his bodily efficiency is able to sustain.

The fourth point, Mr. President, is to establish a tribunal authorized to fix, during the war, hours of labor, wages, salaries, profits, prices, and bonuses, and to provide that such tribunal shall give consideration first to the effective prosecution of the war, and, secondly, to what is fair to individuals and groups in relation to other individuals and groups and in relation to the fighting forces and the national economy.

Mr. President, I think that what has occurred respecting labor has been a perfectly natural evolution. It has not been primarily the fault of either labor or industry, but of the American Government. When American industry was called upon by our Allies to provide equipment for them, to be paid for with the money of the Allies, the Government did not step in and fix the limit of its profits. Apparently the Government was willing for industry to make from our sorely pressed Allies abroad whatever profits it was able to make. Consequently the impression got abroad—and naturally reached the employees—that industry had a great opportunity to enrich itself out of the war that was going on on the other side of the world. Many—including some Senators—were saying that it was not our war anyway, that we now had a chance to make up for the hard days of the depression, and therefore we should charge such prices and make such profits as we were able to make. Consequently, high profit scales were established, high prices were put into effect and, obviously and naturally, high wage scales followed.

That condition continued until the time came when two valiant Senators rose in the Senate and offered an amendment authorizing the Government to take over any instrumentality which the Government might require and could not obtain by agreement with its owners. That indicated that the Government reserved the power to acquire those instrumentalities.

The PRESIDING OFFICER (Mr. VAN NUYS in the chair). The Chair calls the attention of the Senator from Florida to the fact that his time on the amendment has expired.

Mr. PEPPER. I will take time on the resolution.

When the war eventually came to our own shores by reason of the dastardly attack of the base Japanese, what policy did the Government then follow? Instead of at once calling upon the American people, as an act of patriotism, to

put their factories, fields, and farms, their sons, and their strength on the Nation's altar, again we started off on a program of profit for industry and enterprise. We even eliminated some of the price ceilings which previous laws had put upon the statute books. So again manufacturers came to Washington and started haggling over contracts with their Government—not all of them, but a great many of them. Cases have been brought to my personal attention in which as much as months were spent in dickering over the details of contracts, the price the manufacturer was to receive, and what the conditions of the order were to be. As a matter of fact, Mr. President, I think time will disclose that in the long run we would have been far ahead if the responsible officials of the Government had called the representatives of American industry to Washington and said, "Gentlemen, your country is attacked and in danger. Today America expects every man to do his duty; and we know you will. You will be advised what you are expected to produce, and you will go home with the obligation of turning your factory into the production of that article or those articles."

If that had been done, when the employer got back to his factory and disclosed to his employees that he had patriotically put his factory at his country's disposal, I do not believe any labor union in America, or any substantial, responsible labor leader would have taken advantage of that kind of a manufacturer and tried to profit from the patriotism of such management.

But when labor saw the profits of the manufacturers soaring, when it saw exorbitant bonuses and outrageous salaries, some of them extending to more than 1,300 percent of what they were before the war began, was it not natural and inevitable that labor should say, "If that is the kind of a war we are going to fight, we are entitled to our just share of the national income?"

Another thing occurred quite naturally, Mr. President, and the able Senator from Wyoming [Mr. O'MAHONEY] gave eloquent expression to it on this floor. Finally agriculture came knocking at the door of the Government. It said, "Look at the wage scales; look at the scale of business profits, and compare the income of American agriculture with the profits of American business, and see how poorly the comparison stands for agriculture." Quite naturally agriculture started asking that it have a fair share in the distribution of the national income.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

Mr. PEPPER. I yield.

Mr. O'MAHONEY. Let me interrupt the Senator at this point to say that the Senator has not correctly stated the effort which was made in connection with the price-control bill. I know that he has stated the information which was broadcast to the country; but the position of those who spoke for agriculture upon this floor was never that agriculture should be permitted to delve its hands into the Treasury. The position of those who spoke for agriculture was that agriculture should not be victimized when other elements were not being controlled.

Mr. PEPPER. I thank the Senator. That is a much better statement of it than I could have made. That is what I intended to say.

What I have intended to infer, Mr. President, is that the high price structure which has gradually grown up and the inequalities which have crept into our economic life have quite naturally come into existence because the Government did not step in with sufficient foresight and force to see to it that each one obtained his or her or its just deserts.

If that had been done by an appropriate agency following an intelligent process and pursuant to a courageous sentiment, there would not have been the clamor from various groups to have a larger part of the profit of the war effort.

What I propose is the only effective way I know of to see to it that there is a fair balance in the whole economy and a fair distribution of the benefits and burdens among all the people. Consequently, I have proposed that Congress establish a tribunal authorized to fix, during the war, hours of labor. If 40, 45, 48, 50, or 60 hours a week are the hours which will produce the best results from the standpoint of production, those should be the hours. If hours should be lengthened in one industry and shortened in another, that is what ought to be done. If in one section there should be an increase and in another section a decrease by some tribunal acting only from patriotic motives, that is what ought to be done. That requires flexibility and judgment on the part of the directing tribunal and cannot be prescribed by law.

That is the reason why I have said the Congress should establish a tribunal with such power.

Mr. TAFT. Mr. President, will the Senator yield for a moment?

Mr. PEPPER. I shall have to decline to yield until I finish; I decline because of the limitation of time, and not because of anything else.

What I mean to say, Mr. President, is that such board should have power not only over hours of labor, but over wages. After all, what is time and time-and-a-half pay except wages? The extra pay is simply added to the pay envelope at the end of the week. If wages are not high enough in relation to industry's profits and in relation to agriculture's prices, they should be raised; but they should be raised by someone who has the public interest in view, and each group should be dealt with fairly in relation to the others and in relation to the national economy. That is the only way by which we shall ever prevent inflation.

I have included salaries. I see no reason why the same authority should not have the power to limit the salaries paid executives who are engaged in the manufacture of war commodities. Why should the president of a factory manufacturing airplanes receive $100,000 or $200,000 as his annual salary, and give a bonus of $25,000 a year to his girl secretary, and then complain because a carpenter makes a dollar an hour?

If we want to be fair, if we are to be effective, if we are to gain the confidence of the country, the whole economic picture must be considered by the proposed tribunal; and every individual, every class, every segment, and every section must be dealt with rightly and fairly with respect to one another and with respect to the total national economy and the country's defense effort.

I have therefore included the power to fix prices. Obviously, unless prices are fairly fixed, wages cannot be kept down, and profits cannot be controlled. So the board which is to deal with this subject must have the whole range of factors in its hands or it will not be able fairly and effectively to do the job. Its powers should be sufficiently comprehensive to extend to bonuses.

I have cited as a fifth proposal, Mr. President, prohibition of the payment or receipt of any entrance fees as a condition precedent to war work. Mr. President, imagine the spectacle of a man going to work on a defense facility and having to pay a labor union such a sum as $25 or $50—or in some cases $100 or more before he can use his hands and his skill to defend his country. Such a condition is an abomination against patriotism; and certainly the last to avail itself of such a policy should be the labor-union group, which stands tied forever to the citadel of freedom and liberalism in the world. Therefore, we cannot, when our homes are in danger, stand by and tolerate what in normal times is a fair privilege charge and initiation fee for membership, and allow that kind of toll to be levied—a practice which in some cases has innocently grown up, and in other cases has been willfully contrived for the purpose of taking advantage of the emergency.

I want to see labor unions continue, and I believe that the country is better off with its labor organized into responsible unions; but, Mr. President, in war we cannot put the dollar mark athwart the threshold of labor's door, and say that a man must pay for the privilege of associating himself with his fellow men, to better himself and to defend his country—at least, not more than to the extent of a nominal figure or contribution.

Sixth, authorize the President, for the duration of the war, to acquire or take control of any factory, mine, or facility, at compensation to be fixed by him.

To a very large extent the President has such power; but I desire to be sure that it has no limitations. I want it to be as complete as the power that the labor government in Australia has given to its government in order to hold back the marauding Japanese who are appearing at the very threshold of that country. Here in America we are closer to the enemy's assault than we know. It is not impossible that within 30 days, either upon the borders of this country or on this continent, there will be falling the deadly shells of a wicked enemy, shells that will be spilling not simply rivulets but rivers of blood, the lifeblood of our citizens.

Seventh. Empower the President to direct the use or kind of work to which any factory or facility shall be put to as-

sist in winning the war. If a man's factory is needed in order to do a certain kind of work, let some competent and fair tribunal have the power to say, "We need your factory; you must devote it to a certain kind of use," and then proceed to fix the profit that the owner will receive from its use. That is the only way I know by which we can ever live up to the promises that General MacArthur made to the stalwart people of Australia who are fighting today because they think they can depend upon aid from America; that is the only way they can ever hope to receive what he said would be the full resources and the complete effort of this country.

Eighth. Create two agencies, the heads of which shall be of Cabinet rank, one charged with the mobilization of manpower, and the other charged with the protection of the civilian life behind the lines, so that the American family shall best be served, as men and women are mobilized and communities dislocated by the necessities of war, and to provide prompt and just relief to those upon whom the burden of war has fallen with devastating severity.

Mr. President, I shall not have time, now being limited in time as I am, to discuss every aspect of this matter. I shall discuss just one phase of it. Some weeks ago the automobile industry was cut off from the production of automobiles; and the automobile dealers of the country were frozen, not out of business, but in business. The Ford dealer from Tampa, Fla., came here the other day and told me that under the present rationing plan it would take 10 years for him to dispose of the cars he had on his floor when the order went into effect. The Reconstruction Finance Corporation has not even yet worked out a plan to finance the automobiles that are on the dealers' floors, so that they can keep their properties until the automobiles can be sold.

Mr. President, I call that bungling. The authorities have not yet provided means by which the mechanics and the facilities in the garages can be used in national defense. I call that bungling; and I call the whole dealing with that subject bungling. What I desire to see is some responsible agency that, backed by Congress, will be charged with the duty of foreseeing these things, anticipating such dislocations, and, when they do come at last, make effective provision, as best it can be made, to equalize the burdens upon the citizenry of this country, so that no one shall especially suffer more than is necessary.

Ninth. Direct the competent Federal agencies to make an immediate survey and the earliest practicable report upon the extent to which underprivileged and subnormal conditions exist in regard to health, education, and economic opportunity in the United States, and then Congress to resolve that it will make effective provision to remove those handicaps, so that we shall give not only our own people but the people of the world, by our own example, the best evidence of our faith in democracy and the dignity of man.

Mr. President, let me say with equal candor that various committees of the Congress in the interest of national economy have started an attack upon certain agencies which have been created by the Congress in the past. One of them is the National Youth Administration, one of them is the Civilian Conservation Corps, and one of them is the Farm Security Administration. There are many others that already have been attacked and will be attacked much more viciously in the days and months and years that lie ahead.

Mr. President, boys from America's humble homes are being called to the colors. This week I learned to my consternation that the Bureau of the Budget or some agency of the Government had already stopped the activities of the National Youth Administration under which they have in the past given work opportunities to needy boys and girls in the high schools and colleges of this country so they could attend school.

I am ashamed of a government which, when it is prattling and parading democracy to the people of the earth, will let a poor boy or girl who has not the wealth or the opportunity to get an education, go without it because he or she cannot even get a chance to work—and when the total amount involved is $24,000,000. That is what some people call economy. It all depends upon what kind of economy is talked about, Mr. President. Is it economy in human lives, economy in spiritual light, economy in wider horizons of opportunity, to save $24,000,000, and throw out of the high schools and colleges of America tens of thousands of worthy boys and girls?

That is an example of the perversion of patriotism which is going on in some spheres of this Congress.

So, Mr. President, I say we shall hear the worst attack upon the Farm Security Administration because it tried to make it possible for some of the citizenry—and white citizenry at that—of this country to exercise the privilege of sovereignty, and to vote. This agency has been denounced as a betrayer of the public trust in this country.

My God, Mr. President, we talk about saving the world for democracy, and we will not let a citizen vote because he does not have the money to pay for the privilege, and condemn the agency that lends the money to him.

If that is the example we are going to give at home in this crusade for democracy, all people are not going to believe us, Mr. President, and we shall find many people behaving the way people behaved in certain other areas—not seeing much advantage as between one master and another.

So I say, with no apology, let us go out into the highways and byways; let us go to the barren and eroded fields; let us go to the depleted forests; let us go to the rude mountain shacks, and lift these Americans up. Let us go where the humble boys and girls are, and not throw them out of schools, but bring them back with the welcome hand of their Government, saying, "God bless you; prepare yourselves better not only for the physical but the spiritual ordeal which lies ahead."

Let us go to all of our neglected people, and try to lift them up to a level where they will have a chance to enjoy the dignity of citizenship. Let us try to build greater opportunities for them in the sun of their national life. Then, when we have a nation which believes its own government really has its heart burning in the democratic cause, we will sense a new sentiment in this Nation, and we will find a throb of mighty power, greater than any force we have heretofore known.

Mr. President, you have generously borne with me while I have offered these suggestions for consideration by the Congress. I earnestly hope that what the Congress does will reflect a new sentiment in the Congress, a sentiment of vitality and spirit on the part of our membership which will make us pray that, as men are dying out in the remote places, and millions more are yet to die, the least we can do is to be worthy of them; that we shall at least risk our political fortunes at a time when they gladly and enthusiastically risk their very lives in the cold oceans or on the bloody fields of battle.

Mr. President, may I say, therefore, that we should lay down a simple standard for our conduct in the future: First, does it progress the cause of winning the war? Second, before God and our people, and with the memories of the dead and the prospects of the living in our consciences, is it right? If it is, without fear or favor we should do it. Let us so bravely live and labor, and we shall deserve to have it said by those who come after us that we kept our rendezvous with destiny; we were true to the race of man.

CONGRESS IS THE CITADEL OF DEMOCRACY

Mr. O'MAHONEY. Mr. President, when the Senator from Florida began his eloquent address, about three-quarters of an hour ago, and read the first of the nine proposals which he has now enunciated to the Senate, I asked the Senator to yield because I felt that he began this admirable and much-needed speech with what will be interpreted as an attack upon the Congress. My feeling is that the criticism which the Senator directs against the Government should not be directed to the Congress.

Mr. PEPPER. Mr. President, if the Senator will permit me to interject, the last thought in my mind, the one most remote from my purpose, was to make an attack upon the Congress. I merely offered a suggestion, in which I hoped the Congress would find some merit, as to how the Congress might more militantly and effectively lead the Nation into total mobilization of its strength to win the war.

Mr. O'MAHONEY. I appreciate what the purpose of the Senator from Florida was, but I think it unfortunate that he used the words which he did employ, because inevitably they will go out from this Capitol to all sections of the country, and they will add to what I conceive to be one of the most unfortunate misconceptions of this crisis.

It is a fact, Mr. President, that the executive arm of a free government may be reduced by 90 percent, but democracy will still stand. The judicial power may be almost eliminated, but democracy will still stand while there remains a legislative body responsible to the people. The legislature is the citadel of democracy. So the most serious attack upon free government, here or anywhere in all the world, is that which is made upon the legislative body, and I say to the Senator from Florida, and to those who are gathered here, that when the people of the United States lose their confidence in the Congress, then indeed is democracy facing its greatest danger on the home front. When Congress goes, free government goes, for then all power is concentrated in the Executive. It is important, therefore, not lightly to destroy the confidence of the people in the Congress.

I submit that the record of this Congress is not one to justify the charge made by the Senator from Florida, or at least the charge which may be properly inferred from his remarks. I was very glad to have him say that it was not his purpose to attack Congress. It is true that he said, however, that the Congress of the United States has today sunk to a lower level in public estimation than at any time in his memory.

Mr. PEPPER. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. PEPPER. I did not express that as my own opinion. I said that in my opinion it was the sentiment of the country that the Congress enjoyed its confidence less than it has within my memory. I was trying to report what I think I have seen in the sentiment of this country. I hope I am wrong; I am afraid I am not.

CONGRESS HAS FREQUENTLY TAKEN INITIATIVE

Mr. O'MAHONEY. I understand exactly what the Senator said, and I do not wish to imply that I thought he desired to charge that Congress has failed or that it deserves the low opinion which he thinks the people have of it. I understand that he was reporting what he has heard and observed as he has gone around the country. I, too, hope that he was wrong in his report. I think he was wrong in his report, but I want to make it clear, by appealing to the records, that if anyone entertains that opinion, it is an opinion which is not justified by the facts. Congress has done everything it has been called upon to do to win the war. It has taken the initiative in many matters to improve our war effort. Indeed, Congress has been ahead of the Executive in its endeavor to solve many of the problems which are presented by the war. I am of the opinion, as the Senator might have expressed it with respect to the Government as a whole, rather than as to Congress only, that the people of the country are 6 months ahead of Washington. But the charge of failure to accomplish the result which the people of America want cannot be laid at the door of either House of Congress, and certainly not at the door of the Senate.

Mr. PEPPER. Unhappily, Mr. President, I do not have any knowledge that we have taken the profits out of war, and that we have removed limitations on the hours of labor.

Mr. O'MAHONEY. If the Senator will bear with me, I will show to him what I mean. The Senator has very properly and wisely said that the people of the United States would like to see the profits taken out of war. I stood on this floor more than a year ago declaring that the people of this country did not want any profits made out of the war. I was not alone. We wrote amendments into priority laws as long ago as 1940 to strengthen the war power of the Government. It was clear to many then, as it is clear to many now, that anyone who dreams there is any profit to be found in this war is just unaware of the nature of this conflict

When the price-control bill was before this body last January there were Senators who, like myself, called attention to the fact that the measure was not an all-out effort to prevent inflation. I well remember pointing out that the bill which was sent to this body with the blessing of the administration did not undertake to control wages, did not undertake to control profits, did not undertake to control fees or rents, except rents in defense areas. In other words, that price-control bill which was sent to the Senate and to the House was only a partial bill. I remember very well saying on this floor, during that debate:

> Is it not time we all realized that we should be through with half measures, that we should go to the very heart of this problem?

But every effort that was made to do more than go halfway was blocked. The policy of the Executive was to enact a selective rather than a complete price-control bill, and because we did not have a complete measure then, we have had continuous difficulty since over farm prices, wage rates, profits, fees, and charges of all kinds.

When the price control bill was under consideration in the Banking and Currency Committee of the House of Representatives, for example, in August last, and Mr. Leon Henderson, the Price Administrator, was testifying there with respect to the bill, he was asked over and over again by Members of the House whether the bill should not contain authority to control wages and profit, and his answer was invariably "No." Why blame the Congress. I remember reading the testimony. I could recite the questions which were asked by Members of the House, like Representative PATMAN. He addressed the inquiry to Mr. Henderson, "Is it not necessary, if we are to prevent inflation, to control wages as well as prices?" And the answer was a blunt "No."

Members of Congress, because they realized that we are in a great crisis, were unwilling to delay the enactment of the partial bill by making a fight for a more complete one for fear that inflation would get too great a start. We must recognize, if we recognize anything, that a war cannot be fought by a legislative body. A legislative body can only provide the sinews of war. The executive authority must take charge of warfare, and if Congress were to attempt to intrude itself into the strategy of war, the result would only be the creation of impediments to the successful operation of the war, rather than aiding in its assistance. The point is that there was a substantial body of opinion here months ago for taking all the profit out of war. Leadership decided that the time for that action had not arrived. Leadership may have been right. But Congress should not be required to carry the blame.

WHAT CONGRESS HAS DONE

Mr. President, I am very happy that the Senator from Florida has raised this question here today. It affords an opportunity to point to some things Congress has done. It is true, as we can point out, that it was the Congress of the United States, by, I think, a unanimous vote, which created the joint committee, executive and legislative, for the purpose of making a report as to the nondefense expenditures which should be eliminated.

It was the Senate that set up the Truman committee and instructed it to make investigations to make sure that there were as few errors as possible committed in the administration of the war.

It was the House of Representatives which has set up committees, like those presided over by Representatives TOLAN and FADDIS the purpose of which is to aid in the prosecution of the war.

It was the Congress which has made repeated efforts to find a place in the war effort for little business.

These committees have revealed many of the facts which, curiously enough, form the basis of the criticism of Congress in some instances.

With respect to the labor question, it must be remembered that the House of Representatives months ago passed a bill intended to solve that problem and secure full production. The bill may have been defective. It may have been unwise, but it was passed by the House and came over here to the Senate, and went to the Committee on Education and Labor, where it has since been.

On December first last the Judiciary Committee of the Senate passed the so-called Connally bill, intended to give the President the power to take over strike-affected factories, and to freeze labor conditions, so that production would not be impeded by any questions of closed shop, or open shop, or overtime pay, or any of the other issues that affect the labor question, but that bill is still upon the calendar of the Senate because leadership has believed it was premature. The point is that there has been action in Congress, not inaction as the public has been led to think. There was no agreement; but that is the democratic method. We must await agreement with the Executive.

Under the able chairmanship of the senior Senator from Oklahoma [Mr. THOMAS], an appropriation subcommittee last week called before it the heads of some of the departments to testify on this question. Miss Perkins, the head of the Department of Labor, filed a letter with the committee explaining why, in her opinion, that bill should not have been passed.

Mr. President, my point is not so much that either of these bills should have been passed. Perhaps they should not have

been passed. My point is that Congress cannot be condemned for failing to act upon this or other matters. Congress is ready to act. Congress cannot take the leadership. It has not failed to authorize any war program that has been laid before it.

Members of Congress feel—and I think very rightly—that the great danger that confronts this country is the same danger of internal disunity that overwhelmed so many of the countries of Europe. We must not waste our substance and our emotions in fighting among ourselves instead of joining to fight the enemy. It would be a tragic error for the people of the United States and the Congress now to tear themselves to pieces in a battle over the closed shop, or the open shop, or extra pay, or no pay. Questions of that kind can be settled satisfactorily only when it is generally comprehended that the proposed solution is not offered for the benefit of a particular group. The opportunity for bringing about such comprehension is here. All that is necessary to carry our people into the most enthusiastic, unified action to defend this country and to win the victory in this war is for the President of the United States to take the leadership. He was elected to be the leader. The Congress and the people will follow him in an all-out national policy of mutual trust.

The Senator from Florida indicated his belief—I took down a note of what he said—that Congress must take the leadership. Congress cannot take the leadership. That is the task of the Executive. The Members of this body, Republicans and Democrats, new dealers and anti-new dealers, are ready to stand shoulder to shoulder to win the war. All that is necessary is that it shall be made eternally clear to the people of the United States that no attempt is to be made by any faction, by any group, by any party, to abandon the fundamental principles of democracy.

THE TASK IS NOT EASY

Mr. President, the task is not an easy one. It is difficult because in the very nature of the things that have transpired in the last 25 years there has been growing up a constant centralization of power—economic power in the first place and then political. The Senator from Florida has read here this afternoon some of the statements made by Mr. Arnold with respect to the agreements of great American corporations with great German corporations. That has all been in the record. Two or three years ago the story of the cartel system was told—told in the hearings of the Temporary National Economic Committee. It was a manifestation of centralism which has been the mark of our time. If we want to understand the steady expansion of the Government of Washington, we shall find it in the fact that these great business agencies have grown so great that they dominate the economic life of the whole country, and the people had nowhere to turn except to Washington for the protection of their interests. It is a manifestation of the same economic affliction that has produced the war. Class conflict is the principal enemy of democracy. The greatest unifying force imaginable among our people would be a rededication to the principles of free government without class distinctions.

We know that the people of the country are ready to make any sacrifices to win this war. I think no greater proof of the patriotism of any people was ever afforded at any time in history than that given by the people of this country in their response to the many demands for sacrifice in winning this war. The Senator from Florida refers to the automobile dealers. The automobile dealers in every State in the country, in every county, and in every village of the United States have seen their business taken away from them. They were ready to make that sacrifice. They made no complaint. They want to know only that the sacrifice is for the preservation of this country and not for any other purpose.

Mr. President, I know that at this hour Members of the Senate are not desirous of having this debate prolonged; but, having listened to what I regard as a much-needed speech by the Senator from Florida, and one which deals with fundamentals, I could not refrain from pointing out that the record demonstrates that the Congress of the United States has not failed. It has appropriated more money than any person could ever imagine, to enable the Army, the Navy, and the executive arm of the Government to function. We have provided the Army and the Navy with everything they could possibly need. We have asked only that they go out and do the job. There has been no hanging back here.

For example, with respect to the production of materials, month after month Members of this body have been begging the O. P. M. and the War Production Board to undertake an immediate campaign for the utilization of materials in the United States. The failure is not the failure of Congress. It is the failure of those to whom the authority has been given. When I say that, Mr. President, like the Senator from Florida, I do not say it in any critical sense, because I realize that the task with which they are confronted is a task of the utmost magnitude. It is a task which is almost beyond the imagination. The time has come when we must put aside and behind us, at least for the duration of this war, any thought of group advantage or group benefit. We cannot permit this to become a conflict of labor versus capital, capital versus labor, capital versus the farmer, or the farmer versus capital. All groups of the country must be brought together in one universal comprehension that unless the United States is speedily victorious the very foundations of democracy will be endangered.

While we are talking about this matter let us not forget that it is physically impossible for some of the gentlemen who, upon the radio and in the newspapers, undertake to pass judgment upon what is happening in Washington and in all the capitals of the world to keep themselves fully advised day after day. When I listen on the radio to some of the high-pitched and hectic declarations which are made by commentators upon what is transpiring here I cannot fail to remember that there is a Senate; there is a House; there are two-score standing committees, all working at the same time. It is physically impossible for any reporter daily to keep in constant contact with what transpires upon the floor of both Houses and in the various committees and also know all the secret plans of the warring nations.

Judgments and opinions so disseminated have none of the characteristics of infallibility. The task which confronts us is difficult enough at best; but no person in Washington, whether he be a member of the Government or not, can fail to know that most Members of Congress and of the Government are diligent in their tasks; that most Members of Congress are patriotic and are endeavoring to do what they can best do to preserve this country and to provide the sinews with which the President and the executive arm of the Government may carry on the war.

Our duty now is not to seek only for opportunities to criticize, but to think of constructive action. No bill ever came upon this floor, and no suggestion ever came from any person's mind with respect to any activity with respect to which it would not have been possible to say, "That is wrong; look at the mistake here, and look at the mistake there." The ether has been filled with criticism. It has been filled with the voices of those who are picking out the specks upon a really great achievement.

WE MUST SUPPORT THE PRESIDENT

Let us not forget that it was on December 7 that the war came to us, and that now, a little more than 4 month. afterward, we are already hearing about the activity of our men and our machines in distant lands. Let us not forget that American airplanes, made by American capital and labor, are now flying upon the Russian front. Let us not forget that while all this criticism was pouring our from Washington, undermining the confidence of the people in the Congress and the Government, MacArthur was escaping from the Philippine Islands and reaching Australia. I said "escaping." That is not the word.

He went there by the order of the Commander in Chief, to become the leader in Australia of the effort of the United Nations to defend the common cause.

Let it not be forgotten that when MacArthur reached Australia he was greeted there by American soldiers and sailors who had been transported across the Pacific Ocean without the loss of a single life. That was an achievement. It was an achievement for the Executive. It was an achievement for the Congress. It was an achievement which was ordered weeks before it was accomplished. During all the weeks while it was in process of accomplishment criticisms were being poured out, and the armchair strategists sitting by the radio were sending out their judgment about what should be done or what should not be done, all of it undermining confidence.

Mr. President, if this war is to be won speedily and efficiently, we must make up our minds to the fact that we have a leader who was chosen by the people of

the United States. He is the democratic leader. Not all of the people voted for him. Some may not like all he is doing; but he is the Nation's leader, and our duty now is to support the hands of the leader. But it is also the duty of the leader to lay down a definite program which will make it clear to all the country that we are standing foursquare to maintain democracy and all it means in the United States and to defend it throughout the world in this war.

Mr. LUCAS. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. LUCAS. I wish to commend the type of speech which the distinguished Senator is making. In my humble opinion it is long over-due in the Senate. Instead of striking at one another in this great Chamber and further disuniting the American people in the greatest emergency we have experienced since Revolutionary days, it is high time that we start swearing a little more at Hitler, his scavenger, Mussolini, and the treacherous Japanese. If we do a little more of that, in my humble opinion, we can come nearer to uniting the American people than we can by criticizing one another here.

I wish to add this to what the Senator has said: It was on February 22 that President Roosevelt gave the order for MacArthur to leave the Philippines; and it was some time before he was able to turn over the command to Wainwright and his men and make the necessary final arrangements to get to Australia. During that time the Commander in Chief of the Army and Navy was criticized time and time again for not doing something about MacArthur in the Philippines. My mail demonstrates it beyond the shadow of a doubt. It was even implied here on the floor of the Senate that the President of the United States was using politics in attempting to win the war, instead of listening to the admirals and generals in connection with the great task which lies before him.

In my humble opinion, there is not a man in the United States who is more patriotic, earnest, or sincere in attempting to save democracy than is Franklin D. Roosevelt, the Commander in Chief of the Army and Navy. He will listen to counsel, and he does listen to advice from the officers of the Army and Navy.

The VICE PRESIDENT. The time of the Senator from Wyoming on the amendment has expired.

Mr. O'MAHONEY. Mr. President, I will take time on the resolution.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. O'MAHONEY. Mr. President, before I yield to the majority leader, let me say that I am very glad the Senator from Illinois has interrupted my remarks in order to make the comment he has made. I believe that when history is written it will recount the great achievement of our President. Many Members of the Senate and of the House and many people of the country may not agree with his policies or with what he has done; but, fundamentally, last November the people of the country demonstrated the fact they were devoted to his foreign policy, and their conviction that he was right in endeavoring to preserve the united front of the United Nations against aggressors. When the final story is written I think it will be seen that he has accomplished the great objective which the public saw possible in him; but it can be accomplished only by united action.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield to the Senator from Kentucky.

Mr. BARKLEY. I think it should be stated that not a single major action involving a question of major policy or strategy has been taken by the President of the United States without consultation with military and naval advisers. No such step has been taken except by the unanimous agreement of his advisers in the Army and Navy. The President is the Commander in Chief of the Army and Navy. He cannot escape that responsibility even if he desires to do so. Being the Commander in Chief by the terms of the Constitution, the decisions, of course, fundamentally must be made by him. However, I think it should be known, especially in view of the fact that intimations have been made a time or two that the President takes his own advice and does not consult others, that there has not been a single major action taken or policy adopted by the Commander in Chief except with the unanimous agreement of those who advise him.

Mr. O'MAHONEY. Mr. President, so far as foreign policies are concerned, we can look back today upon the record the President has made, and we know that years ago he foresaw what was coming; we must pay him that tribute. However, that is not the question which now confronts the country. Today the country is upon the very verge of being split asunder over controversies involving domestic policy; and it would be a great tragedy if that should occur. I desire to say that I have no doubt whatsoever that 99 percent of all the organized labor in this country is ready to devote its complete effort, without restriction or restraint, to the winning of the war. They know, as we know, that the war must be won upon the assembly line and in the factory, as well as upon the front. The soldiers in the trenches, the soldiers in the air, upon the battle front, cannot stay there if they are not supported by the workers in the factory. The workers recognize that fact. The farmers, too, are ready to cooperate in every possible way—and I know that—likewise, the leaders of industry are ready to do so.

The great number of business executives who have come to Washington and have loyally contributed their time and their brains to the winning of the war, which is essentially a war of business organization, have demonstrated their good will, their patriotic intention. Of course, there are some who have not been adverse to taking advantage of the situation; and Navy contracts and Army contracts have been let—sometimes thoughtlessly—in such a manner as to enable great profits to be reaped.

This body recently passed the second war powers bill, which is now on the desk of the President, awaiting his signature. The bill contains the specific authority to the Chairman of the War Production Board to investigate the books of every war contractor. Congress again, I say to the Senator from Florida, has taken a stand and has given the power to take the profits out of war.

However, our great need now is to fuse all these elements in such manner as to give assurance to all of them that there is no intention upon the part of any person in responsible position, at the head of labor, or at the head of industry, or at the head of Government, or any of its bureaus, to take advantage—specific advantage, personal advantage, or political advantage—of the crisis in which the country is involved.

Mr. BARKLEY. Mr. President, will the Senator yield at that point for an observation?

Mr. McNARY. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. MURDOCK in the chair). Does the Senator yield and, if so, to whom?

Mr. O'MAHONEY. I yield to the Senator from Kentucky.

Mr. BARKLEY. Mr. President, in line with what the Senator said a moment ago in reference to the willingness of labor to make sacrifices and to forego advantages and opportunities to make profits, it is noteworthy that in the morning newspapers in Washington, and, I presume in the newspapers throughout the country, there appeared an advertisement by the United Electrical Workers of the country, comprising about 400,000 men, offering to forego not only double time but time and a half on all work they do during the war period, provided that all the money they lose by so doing shall go into the Treasury of the United States instead of into the treasuries of the corporations for which they work, based upon the fact, as they stated, that contracts have already been entered into between their employers and the Government at prices which contemplate the payment of time and a half and double time under the 40-hour law. They are willing to forego the time and a half and double time provided that the Government of the United States which, in these contracts, must pay for it, gets the advantage of it, instead of their employers getting the advantage.

I thought that was a fine example of the willingness of labor to make sacrifices during these critical times.

Mr. O'MAHONEY. Mr. President, I must say to the Senator that an offer of that kind is only a piece-meal offer.

Mr. BARKLEY. Yes; I realize that.

Mr. O'MAHONEY. It deals only with a segment of the case. What we need now is that which we discussed upon this floor last January when the price-control bill was under consideration. We need an executive, an administration program, if you please, laid down here, which will take all the profit out of war and afford opportunity to all classes to contribute to the war effort.

Mr. BARKLEY. I was merely seeking to confirm what the Senator had stated by pointing to this one instance, in which the laborers are willing to deny themselves the advantage of extra pay.

Mr. O'MAHONEY. I understand, and appreciate the Senator's contribution very much.

Mr. McNARY. Mr. President, I wish to call up a matter not related to that now being discussed, because I am forced to leave. It will take but a moment, I believe, if the Senator has not concluded.

Mr. O'MAHONEY. I was about to add another word. The Senator from Washington asked me to yield to him, and if the Senator from Oregon will bear with me, I will answer the Senator from Washington, and will then conclude.

Mr. BONE. Mr. President, I merely wanted to make the observation that there is a strange historical parallel between what we are witnessing now and what this country has witnessed during other wars. If there be any critical students of the Civil War in this body they will recall that Lincoln was bedeviled and bewildered and bemused by fights which went on in Congress, and by bitter and unending complaints throughout the country about his conduct of the war. Congress ran like an engine without a governor, and the bitterness which existed between the Executive and Congress at times was a rather terrifying spectacle to the country. Yet the country was torn by a great war which threatened to dismember it.

We just have to be philosophical and realize that such things occur as those which have been mentioned. I know from many of the letters we receive that no two people seem to agree on anything. There is a hopeless confusion as to what should be done.

Mr. O'MAHONEY. I am glad the Senator made the allusion to Lincoln. It brings to mind the fact that one of the bitter controversies of that time was the controversy over slavery, as, of course, all will remember, and many of the leaders of the Republican Party, which had elected Lincoln to the Presidency, were demanding immediate abolition before the President was ready to act. The Senator will recall that Horace Greeley, then editor of the New York Tribune, in issue after issue of his paper, denounced the President for his failure to act upon abolition, and one of the most eloquent writings to the credit of President Lincoln was his famous open letter to Horace Greeley. It is of importance now because, as the Senator will recall, President Lincoln said:

> What I do about slavery and the colored race I do because of its effect upon the Union. I must first save the Union.

Mr. President, it seems to me that that is the pattern for the answer which may be given now to every one of those demanding why Congress does not do this or that or the other thing; why we do not defend labor or punish labor; why we do not punish the farmer, or this or that. Our first duty is to win the war. For my own part, whatever I do by my vote about labor or any of the so-called social gains, I shall do because of my judgment as to the effect it will have upon the primary purpose of winning the war. What I do by my vote in respect to profits will be done with that in mind. So with every other problem which arises now in the legislative halls—the first, main, and principal objective is to win the war.

A few days ago I received a letter from a lady living in the northern part of my State, written in pen and ink upon two brief pages. In the letter she said, "The country now wants leadership, and it hopes that the President will get tough in that leadership."

Mr. BONE. Mr. President, will the Senator yield further?

Mr. O'MAHONEY. I yield.

Mr. BONE. As an example of the intense bitterness which characterized the conduct of the Civil War by Abraham Lincoln, I recall one cartoon appearing in the New York Tribune after the terrible battle of Fredericksburg. On the front page of that paper was a cartoon, depicting Columbia with a flaming sword in her hand demanding that Lincoln avenge her 15,000 sons murdered at Fredericksburg.

That sort of bitterness has not yet crept into the present picture and been spread all over the country. We are developing enough of it as it is, and much of it is bitterness not founded on facts, but rather upon a series of assumptions of facts many of which have no existence.

I have seen charges of a strike in a certain industry slowing up the war effort. In that instance I know the strike was in the women's clothing industry, having no relation whatever to making bombers or guns or tanks. But the story goes out merely that so many man-hours are lost. A lawyer who tries to analyze evidence knows there is no relationship there that justifies bitterness. Perhaps the strike should never have been called, but to say that the Government lost a vessel or a bomber or a tank in a strike involving women's undergarments is stretching matters a little too much.

SENATOR FROM NORTH DAKOTA

The Senate resumed consideration of the resolution (S. Res. 220) declaring WILLIAM LANGER not entitled to be a United States Senator from the State of North Dakota.

Mr. McNARY. Mr. President, doubt has been expressed that the unanimous-consent agreement entered into yesterday reflected the intention of the sponsor or those who were present at the time. I entertain that doubt, as I indicated a few moments ago, and in order to clarify the unanimous-consent agreement, and to make certain that the length of time each Senator might take, as I tried to make clear, was to be 30 minutes on all amendments or any motion, and on the resolution proper, I submit a corrected copy and ask that it be agreed to.

The PRESIDING OFFICER. The clerk will state the proposed agreement.

The legislative clerk read as follows:

> Ordered, by unanimous consent, that during the further consideration of the pending resolution (S. Res. 220) no Senator shall speak in the aggregate more than 30 minutes on the resolution and all amendments or motions relating thereto.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE REPORTS OF COMMITTEES

The following favorable committee reports of nominations were submitted:

By Mr. CONNALLY, from the Committee on Foreign Relations:

Guy W. Ray, of Alabama, now a Foreign Service officer of class 6 and a secretary in the Diplomatic Service, also to be a consul.

By Mr. WALSH, from the Committee on Naval Affairs:

Capt. Monroe Kelly to be a rear admiral in the Navy for temporary service, to rank from the 25th day of November 1941;

Brig. Gen. John Marston to be a major general in the Marine Corps for temporary service from the 20th day of March 1942; and

Brig. Gen. Alexander A. Vandegrift to be a major general in the Marine Corps for temporary service from the 20th day of March 1942.

By Mr. McKELLAR, from the Committee on Post Offices and Post Roads:

Several postmasters.

The PRESIDING OFFICER (Mr. MURDOCK in the chair). If there be no further reports of committees, the clerk will state the nominations on the calendar.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

The PRESIDING OFFICER. Without objection, the nominations of postmasters are confirmed en bloc.

MARINE CORPS

The legislative clerk proceeded to read sundry nominations in the Marine Corps.

The PRESIDING OFFICER. Without objection, the nominations in the Marine Corps are confirmed en bloc.

Mr. BARKLEY. I ask unanimous consent that the President be immediately notified of the confirmation of all nominations of today.

The PRESIDING OFFICER. Without objection, the President will be notified forthwith. That completes the calendar.

RECESS

Mr. BARKLEY (as in legislative session). I move that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 48 minutes p. m.) the Senate took a recess until tomorrow, Friday, March 27, 1942, at 12 o'clock noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 26 (legislative day of March 5), 1942:

POSTMASTERS

ARKANSAS

Floy A. Hill, Mountain Pine.

MASSACHUSETTS

Joseph W. Gorman, Upton.

OHIO

Bernice E. Hannahs, Alexandria.
Robert J. Goggin, Ashtabula.
Walter E. Waller, Cumberland.
Eldon R. Martin, Cygnet.

Howard C. Huhn, Hamden.
Kathryn M. Diederich, North Ridgeville.
Grace L. Skidmore, West Mansfield.

PENNSYLVANIA

Chauncey D. Everard, Wapwallopen.

TENNESSEE

Hollis M. Caldwell, Lookout Mountain.
Roy B. King, Madison College.

PROMOTIONS IN THE NAVY

MARINE CORPS

To be a captain

Graham H. Benson

To be second lieutenants

Lowell S. Reeve	Cleland E. Early
Allen H. Anderson	James M. Robinson
Elkin S. Dew	William R. Burgoyne, Jr.
Roscoe M. Nelson	Louis H. Wilson, Jr.
Walter J. Meyer	Maurice J. Kelly
Frank E. Hollar	William L. Flake
Thomas J. Myers, Jr.	Thomas F. Cave, Jr.
Owen P. Lillie	Vincent J. Gottschalk
Evan E. Lips	George A. Gililland
James W. Love	Cliff A. Jones, Jr.
George F. McInturff III	William R. Adams
Guy W. Comer, Jr.	Bryan B. Mitchell
John R. Kerman	John P. Storm
Francis L. Fagan	Rodney V. Reighard
Lincoln N. Holdzkom	John B. Erickson
Charles R. Durfee	John N. McLaughlin
Thomas F. Mullahey, Jr.	Robert Mentzinger
William L. Culp	Charles E. Hinsdale
Charles F. Widdecke	Ralph Hornblower, Jr.
Valentine E. Diehl	William H. Enfield
John R. Lesick	James L. Denig
Richard Phillippi	John W. Bustard
Bruno J. Andruska	Maurice J. Coffey, Jr.
John G. Dibble	Joseph R. Clerou
William K. Crawford	Paul H. Groth

HOUSE OF REPRESENTATIVES

THURSDAY, MARCH 26, 1942

The House met at 11 o'clock a. m.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O Thou who art the Lord of lords and King of kings, we thank Thee that Thou dost come to us each day with light and life. Thy love is infinitely more than we can return and Thy revelation more than we can translate. Thou who looked with compassion upon a doomed city gray with the dust of silent centuries, show us the vision of Thy consecration and heroic purpose. Surrendering ourselves to Thy task may we with passionate ardor bow with penitent reverence before Thee, charting the journey of our souls from the cities of earth to the city of God. Bound and pressed by the tread of the thoughtless crowd, Oh bring us a message calling to higher states of power and blessing.

Thou, who didst come out of history's dawn, have mercy upon the multitude with its great heart, but with its greater ache. Let Thy holy word become flesh, O God, and dwell among us, living and working in deeds of Christian brotherhood. Like the fragrant springtime after a sore winter, heaven's light sheds calmness through starless skies. O Prince of Peace, come to the fallen ruins of our tragic world, transmuting them into forms of spiritual and intellectual might, beholding Thy glory, the glory of the only begotten of the Father, full of grace and truth. In the spirit of our Lord and Saviour. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2339. An act to provide for the expeditious naturalization of former citizens of the United States who have lost United States citizenship through service with the Allied forces of the United States during the first or second World War.

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H. R. 6736. An act making appropriations for the fiscal year ending June 30, 1943, for civil functions administered by the War Department, and for other purposes.

The message also announced that the Senate insists upon its amendments to the foregoing bill, requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. THOMAS of Oklahoma, Mr. HAYDEN, Mr. OVERTON, Mr. RUSSELL, Mr. BAILEY, Mr. REYNOLDS, Mr. BRIDGES, and Mr. LODGE to be conferees on the part of the Senate.

The message also announced that the Senate agrees to the reports of the committees of conference on the disagreeing votes of the two Houses on the amendments of the Senate to bills of the House of the following titles:

H. R. 5802. An act to amend certain provisions of law relative to the withdrawal of brandy for fortification of wines and production of wines, brandy, and fruit spirits so as to remove therefrom certain unnecessary restrictions; and

H. R. 6691. An act to increase the debt limit of the United States, to further amend the Second Liberty Bond Act, and for other purposes.

EXTENSION OF REMARKS

Mr. SMITH of Washington. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and to include therein a statement I made before the Committee on Appropriations

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. HAINES. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD and to include therein a press release from the War Production Board.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

PERMISSION TO ADDRESS THE HOUSE

Mr. LUDLOW. Mr. Speaker, I ask unanimous consent that on this afternoon at the conclusion of the legislative business for the day and other special orders I may address the House for 20 minutes.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

HIGH DEFENSE PROFITS

Mr. REES of Kansas. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. REES of Kansas. Mr. Speaker, I have just noticed in the morning paper that Gen. Robert C. Richardson says that "boys in the Army were 'burned up' by reports that stenographers had been paid $30,000 bonuses on defense jobs."

I think that the people of this country, especially the taxpayers who are going to have to pay the bill, as well as the fathers and mothers of the boys who are in the service, are pretty much disgusted to hear about the exorbitant profits that are being extorted by certain big defense contractors.

The company above mentioned, Jack & Heintz, Inc., who make airplane starters, and which company was also broke a year ago, paid its president $145,000 salary and bonus and paid his private secretary $39,300, and then distributed more than $900,000 among 1,300 other officers and employees. Last month Mr. Jack admitted that he received a $25,000 bonus. A dozen other big contractors, it has been discovered, received direct profits all the way from 40 to 75 percent on war contracts.

Mr. Speaker, I just do not see how those in authority and who are charged with making such contracts would permit a thing like that to get by. No wonder those soldiers are "burned up." The people of this country who have to pay the bill are disgusted and discouraged. This sort of thing must be stopped, and it must be done right now. Every one of these outfits who have taken the money ought to be made to return every dollar of it, and they should be penalized accordingly. Such individuals ought to have their contracts taken away from them. The Government should remove them and operate their plants.

Mr. Speaker, such a thing is shameful and disgraceful. It should not be tolerated. People who will do that sort of thing in a time when our Nation is in the most serious crisis it has ever known are not worthy to be regarded as citizens.

EXTENSION OF REMARKS

Mr. SCOTT. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD, and to include an article from the Washington Post of March 25.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. GUYER. Mr. Speaker, I ask unanimous consent to extend my own remarks in the RECORD, and to include therein a letter from a constituent.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

AWARD OF THE CAMP GRUBER POWER CONTRACT

Mr. ANDREWS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Without objection, it is so ordered.